Supreme Court, U.S.
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No. 87-271

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

HARBISON-WALKER REFRACTORIES,
A Division of Dresser Industries, Inc.,
*Petitioner,*

v.

EUGENE F. BRIECK,
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## JOINT APPENDIX

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**PETITION FOR WRIT OF CERTIORARI FILED AUGUST 17, 1987**
**PETITION FOR WRIT OF CERTIORARI GRANTED MARCH 21, 1988**

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## RELEVANT DOCKET ENTRIES

I. United States District Court for the Western District of Pennsylvania

1. June 29, 1984 —Complaint filed
2. August 13, 1984 —Answer filed
3. July 5, 1985 —Petitioner's Motion for Summary Judgment filed
4. August 1, 1985 —Respondent's Opposition to Motion for Summary Judgment filed
5. August 12, 1985 —Respondent's Supplemental Opposition to Motion for Summary Judgment filed
6. December 19, 1985 —Opinion filed
7. January 8, 1986 —Respondent's Motion for Reconsideration filed
8. January 16, 1986 —Memorandum Opinion and Order entered
9. January 17, 1986 —Respondent's Notice of Appeal filed

II. United States Court of Appeals for the Third Circuit

1. October 2, 1986 —Arguments heard
2. June 19, 1987 —Opinion filed

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

---

Civil Action No. 84-1594

JURY TRIAL DEMANDED

EUGENE F. BRIECK and DOLORES J. BRIECK,
*Plaintiffs,*

v.

HARBISON-WALKER REFRACTORIES,
A Division of Dresser Industries,
*Defendant.*

---

**COMPLAINT FOR DAMAGES AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

AND NOW this 29th day of June, 1984, comes Plaintiffs above named, by and through their attorney, James H. Logan, Esquire, and file this Complaint, respectfully alleging the following:

JURISDICTION

1. Plaintiffs bring this action for damages and for declaratory and injunctive relief pursuant to the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Sec. 621 et seq., and they bring as claims either under diversity of citizenship or as pendent claims arising under Pennsylvania law, a breach of contract claim and claims for the tort of intentional infliction of emotional distress and negligent infliction of emotional distress.

* * * *

PARTIES

3. Plaintiff, Eugene F. Brieck, is a citizen of the United States of America, resides at 45B Hall Drive,



Turtle Creek, Allegheny County, Pennsylvania, 15145, and is the chronological age of 57 years.

* * * *

5. Defendant, Harbison-Walker Refractories, a division of Dresser Industries, is a corporation incorporated under the laws of the State of Delaware, with offices located at Two Gateway Center, Pittsburgh, Allegheny County, Pennsylvania, 15222.

AS AND FOR A FIRST CAUSE OF ACTION

*Eugene F. Brieck v. Harbison-Walker Refractories, a division of Dresser Industries*

6. Plaintiff, Eugene F. Brieck, was initially hired by Defendant on or about June 7, 1965; and he worked continuously with Defendant from that date until on or about July 2, 1982, when he was informed by Defendant that he would be laid off permanently.

7. During the period of Plaintiff, Eugene F. Brieck's, employment with Defendant, he received a steady series of pay increases, his base annual salary having increased to over $26,000 during the last year of his employment with Defendant.

8. Plaintiff, Eugene F. Brieck's, job position was installation specialist, his primary duties consisting of the following:

a. he supervised the installation of refractories for steel-making furnaces, traveling not only in the United States, but also having duties that took him to Chile, Brazil, Argentina, Italy, Turkey, Canada, and Mexico;

b. he acted as a trouble-shooter to handle customer complaints or problems; and,

c. he trained the customer's employees in the operation and maintenance of refractory installations.

9. During the course of his employment with Defendant, Plaintiff, Eugene F. Brieck, always performed his duties in a highly competent fashion.

10. During the course of his employment with Defendant, all of the evaluations received by Plaintiff, Eugene F. Brieck, indicated above-average or at least satisfactory work performance by him.

11. During the entire course of his employment with Defendant, Plaintiff, Eugene F. Brieck, received numerous laudatory comments, orally or in writing, from his supervisors, from other employees, and from customers of Defendant, regarding his work performance.

12. During the entire course of his employment, Plaintiff, Eugene F. Brieck, was never suspended, demoted, reprimanded, warned, or in any way disciplined concerning any aspect of his job performance.

13. In March, 1982, Plaintiff Eugene F. Brieck, received a merit raise and along with such raise he received a note dated March 24, 1982, from his supervisor, Donald Jamison, Applications Engineer, which stated in part the following:

> ". . . The merit raise is well deserved and we hope that we can continue to reward you for your good work. . . . Again, thanks for your fine efforts["].

14. On or about July 2, 1982, Plaintiff, Eugene F. Brieck, was called into the office of Lawrence L. Sheatsley, General Products Manager, at approximately 4:20 p.m.; and in the presence of Donald Jamison, Plaintiff was informed by Sheatsley that he was being immediately and permanently laid off. Plaintiff asked, "Why me", and he was informed by Sheatsley, "We have to start somewhere". Plaintiff was the first person in the Pittsburgh Product Support Department to be given such a layoff. His employment with Defendant of over 17 consecutive years thus was effectively terminated within 10 minutes with no prior notice to Plaintiff.



15. Plaintiff, Eugene F. Brieck, believes and avers that the permanent layoff of Plaintiff was in violation of Defendant's stated policy, which policy was manifested in part by the verbatim report of an interview with Ralph Ytterberg, Senior Vice President-Human Resources of Dresser Industries, appearing in the Spring, 1982, edition of the Dresser Industries Company newspaper, "Dresser News". In response to a question from the interviewer, "How do you determine who gets laid off?", Senior Vice President Ytterbreg [sic] stated in part the following:

> ". . . [L]ayoffs are implemented only after an extensive review of alternatives. Obviously, layoffs, when they are necessary, occur in departments or operating units most affected by the business decline. Length of company service and skill requirements necessary to carry out the reduced business activities are the most important considerations. We try to do what is right and fair. . . ."

16. Defendant's permanent layoff of Plaintiff, Eugene F. Brieck, was motivated by the improper and unlawful consideration of age, as evidenced in part by the following:

a. Defendant retained younger, less experienced, less skilled employees with less company seniority than Plaintiff, rather than laying off these employees, in part because Plaintiff's salary was higher than such employees, and in part because of Plaintiff's age; such a practice was in violation of Defendant's stated policy, as set forth above;

b. Upon information and belief, Defendant has begun to hire new employees under the age of 40, with less relevant skills and experience than Plaintiff, rather than to recall Plaintiff;

c. Upon information and belief, Defendant laid off a number of higher-salaried employees over age 40 who

had considerable company seniority and gave their duties to employees under the age of 40 who had much less company seniority and less skills and experience;

d. Defendant failed to transfer Plaintiff to another department or to retrain him, choosing instead to train younger, less experienced, less skillful people to do duties that with proper training and/or orientation Plaintiff could easily have done. Plaintiff was willing to take a cut in pay if necessary but this option was not provided to him.

17. In putting Plaintiff, Eugene F. Brieck, on permanent layoff status, Defendant in essence terminated Plaintiff's employment; and Defendant should have known how difficult if not impossible it would be and has in fact been for Plaintiff to find similar employment at his chronological age. Defendant's termination of Plaintiff's employment caused Plaintiff not only damages in the form of deprivation of earnings and benefits, but also damages in the form of bodily distress, anxiety, stress, embarrassment, humiliation, pain and suffering. Further, Plaintiff has incurred and will incur attorneys' fees and court costs and expenses.

18. In terminating Plaintiff, Eugene F. Brieck's, employment in the manner set forth above, Defendant acted in bad faith, willfully, intentionally, recklessly, wantonly, outrageously, and maliciously, with disregard for the law, and violated the Age Discrimination in Employment Act.

19. On or about July 19, 1982, Plaintiff filed a complaint of age discrimination with the Pennsylvania Human Relations Commission, and such complaint was cross-filed as a charge with the Equal Employment Opportunity Commission (EEOC).

20. All administrative prerequisites to the filing of the instant Complaint with this Court have been met.



WHEREFORE, Plaintiff, Eugene F. Brieck, respectfully prays this Honorable Court to grant him the following relief:

a. The issuance of an injunction directing Defendant to reinstate Plaintiff to the job position which he held at the date of the termination of his employment or to the job position to which he would now be entitled, and to restore to him all employment benefits to which he would be entitled;

b. all back pay and other benefits to which he would be entitled, plus prejudgment interest at the lawful rate;

c. The issuance of a judgment declaring that the termination of Plaintiff's employment was in violation of his right to be free from age discrimination in employment, as guaranteed to him by the Age Discrimination in Employment Act;

d. Compensatory and punitive damages in an amount to be determined by a jury;

e. Attorney's fees and costs and expenses of litigation;

f. Such other and further relief as may be appropriate.

JURY TRIAL DEMANDED

• • • •

[Summons Omitted in Printing]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DIST[illegible] OF PENNSYLVANIA

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[Title Omitted in Printing]

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**ANSWER AND DEFENSES OF DEFENDANT HARBISON-WALKER REFRACTORIES**

Filed August 13, 1984

NOW COMES defendant, Harbison-Walker Refractories ("Harbison-Walker"), by and through their undersigned counsel, and file the following Answer and Defenses to plaintiffs' Complaint:

FIRST DEFENSE

1. As answer to paragraph 1 of the Complaint, defendant Harbison-Walker admits that plaintiffs' have brought this action for damages and declaratory and injunctive relief pursuant to the Age Discrimination in Employment Act of 1967, and pursuant to diversity of citizenship or pendent jurisdiction, but denies that this Court has jurisdiction under any of these bases.

* * * *

3. The allegations contained in paragraph 3 of the Complaint are admitted.

* * * *

5. The allegations contained in paragraph 5 of the Complaint are admitted, except that defendant's address is now One Gateway Center.



*First Cause Of Action*

6. As answer to paragraph 6 of the Complaint, defendant Harbison-Walker admits that plaintiff Eugene F. Brieck was hired on or about June 7, 1965 and worked for Harbison-Walker until July 2, 1982, when he was laid off because of a sharp decline in defendant's business. The remaining allegations set forth in paragraph 6 of the Complaint are denied.

7. As answer to paragraph 7 of the Complaint, defendant Harbison-Walker admits that during the period of his employment plaintiff received salary increases, and that at the time of his layoff his monthly salary was $2,177.00. The remaining allegations contained in paragraph 7 of the Complaint are denied.

8. The allegations contained in paragraph 8 of the Complaint are denied.

9. The allegations contained in paragraph 9 of the Complaint are denied.

10. The allegations contained in paragraph 10 of the Complaint are denied.

11. The allegations contained in paragraph 11 of the Complaint are denied.

12. The allegations contained in paragraph 12 of the Complaint are denied.

13. After reasonable investigation defendant Harbison-Walker is without information or knowledge to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and said allegations are therefore denied. As further answer, to the extent that such a note as that referred to in paragraph 13 exists, said note speaks for itself.

14-18. The allegations contained in paragraphs 14 through 18 of the Complaint are denied.

19. The allegations contained in paragraph 19 of the Complaint are admitted.

20. The allegations contained in paragraph 20 of the Complaint are denied.

WHEREFORE, defendant Harbison-Walker respectfully requests that plaintiffs' First Cause of Action be dismissed with prejudice and that defendant Harbison-Walker be awarded its costs and attorneys fees in defending this action.

* * * *

[Certificate of Service Omitted in Printing]



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

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[Title Omitted in Printing]

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**MOTION OF DEFENDANT FOR SUMMARY JUDGMENT**

Filed July 5, 1985

NOW COMES DEFENDANT, Dresser Industries, Inc., by and through its undersigned counsel and moves the Court for an Order granting Summary Judgment in its favor on all claims set forth in plaintiff's Complaint, on the grounds that the pleadings, answers to interrogatories, documents produced in response to requests for production, depositions, and affidavits show that there is no genuine issue of material fact and that defendant is entitled to judgment as a matter of law.

/s/ James P. Hollihan
JAMES P. HOLLIHAN
MANION MCDONOUGH & LUCAS
600 Grant Street—5th Floor
Pittsburgh, PA 15219
Counsel for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

---

[Title Omitted in Printing]

---

AFFIDAVIT OF WILLIAM SEKERAS
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

COMMONWEALTH OF PENNSYLVANIA )
) ss:
COUNTY OF ALLEGHENY )

NOW COMES William Sekeras who being duly sworn according to law deposes and states as follows:

1. I am presently employed by Harbison-Walker Division of Dresser Industries, Inc. ("Dresser Industries") in the position of Vice President of Marketing. I assumed that position on November 1, 1983. Prior to assuming the position of Vice President of Marketing, I was Manager of the Iron and Steel Marketing Group, and was the immediate supervisor of Larry Sheatsley, who was the General Products Manager of the Iron and Steel Marketing Support Group.

2. During calendar year 1982, Harbison-Walker Division of Dresser suffered a tremendous decrease in sales revenue. This decrease in revenue was based primarily upon the impact of the decline in the domestic steel market, which was the primary market for Harbison-Walker products. The decline in Harbison-Walker business is reflected in financial data set forth in the 1982 and 1983 Annual Reports of Dresser Industries, true and correct copies of which are attached hereto as Exhibits A and B respectively.

3. Because of the reduced level of business in 1982, Dresser took steps to minimize its losses by reducing its workforce. In April, 1982 a voluntary retirement program was instituted, under which employees with certain amount of service with the company were permitted to choose voluntary early retirement. A true and correct copy of the memorandum describing this voluntary retirement program is attached hereto as Exhibit C.



4. Even with the reduction in force created by the voluntary retirement program described in paragraph 3 herein, it became necessary for additional reductions in force in light of the depressed economic conditions and the continued decline in Harbison-Walker sales revenue and the concomitant increase in losses. In June, 1982, Harbison-Walker was required by declining business conditions to reduce salaried workforce by 10 percent. Consistent with that objective, I instructed Larry Sheatsley to recommend the appropriate number of individuals from the Iron and Steel Marketing Support Group for temporary furlough. I advised Mr. Sheatsley that the primary consideration in determining who should be furloughed and who should be retained was the ability of employees to perform the job functions remaining in the reduced business setting.

5. Later during 1982 I was instructed to reduce the workforce under my supervision even further, and additional temporary furloughs were effected. This process continued through November, 1982 because Harbison-Walker business continued to decline during that period.

6. Attached hereto as Exhibit D is a list of those employees who were employed in the Iron and Steel Marketing Support Group (excluding secretaries) prior to the institution of the layoffs in June, 1982. The information set forth on Exhibit D as to the title, age, and seniority date of these employees is derived from the personnel files of these employees.

7. Attached hereto as Exhibit E is a list of employees employed in the Iron and Steel Marketing Support Group (excluding secretaries) as of December, 1982 following

the layoff process. Again, information as to the title, age and seniority date of these employees has been derived from the personnel file of these employees.

8. Attached hereto as Exhibit F is a list of those employees who during the period July, 1982 through November, 1982 were furloughed from the Iron and Steel Marketing Support Group. In all of these cases, the names of these individuals were recommended for furlough by Mr. Sheatsley pursuant to my instructions, and I made the final decision as to the layoffs, subject to approval of F. Shonkwiler, the Vice President of Marketing and, if necessary, corporate headquarters.

9. Of the four installation specialists employed in the Iron and Steel Marketing Support Group as of June, 1982, Hugh Faust was retained longer than the other three, and was not laid off until November, 1982. The principal reason underlying Faust's retention over the other three installation specialists, including Eugene Brieck, was that Faust had more diverse skills and had considerable prior experience working as a sales correspondent prior to assuming the position of installation specialist in 1978. In comparing Faust and Brieck, Faust was superior in working with records and written reports, and had considerable contact in customer relations as well as in preparation of bids and quotations, an activity which remained in the reduced business environment. Brieck, on the other hand, was solely an installation specialist, and his narrow skills with respect to installation work primarily in BOF shops were expendable given the fact that installation work was extremely low because of the lack of sales of Harbison-Walker products during this period. In addition, Faust was the only installation specialist who had experience in installation work in blast furnace casthouses, an area that had been targeted by Harbison-Walker as a growth market and an area that represented significant potential even during the 1982 period. In short, Faust possessed skills for



which there was still some need even in the reduced business environment, since his administration and sales correspondent experience permitted him to perform other noninstallation functions in the reduced department. Also, Faust had slightly higher performance ratings than Brieck during the 1978-1981 period, as follows:

| | 1978 | 1979 | 1980 | 1981 |
|---|---|---|---|---|
| Eugene Brieck | 3 | 2 | 2 | 3 |
| Hugh Faust | 4 | 3 | 3 | 3 |

The same factors were the basis for the company's recalling Faust in July, 1983 when Harbison-Walker's business began to improve.

10. Attached hereto as Exhibits G and H respectively are job descriptions for the Product Specialist and Installation Specialist positions. These job descriptions accurately set forth the principal functions and responsibilities of these jobs. The duties of the Product Analyst job are similar to those of a Product Specialist. This classification is generally used for a relatively new employee during the first few years of employment.

/s/ William G. Sekeras
WILLIAM SEKERAS

Sworn to and subscribed before me this 3rd day of July, 1985.

/s/ Teresa A. Warholah
Notary Public

EXHIBIT A

**DRESSER'S ANNUAL REPORT 1982**

* * *

FINANCIAL HIGHLIGHTS

| *Dollars in Millions* *Except Per Share Data* | 1982 | 1981 | % Change |
|---|---|---|---|
| Sales revenues | $4,160.6 | 4,614.5 | −10 |
| Earnings before taxes | $ 242.8 | 528.6 | −54 |
| Net earnings | $ 172.3 | 316.6 | −46 |
| Dividends paid | $ 60.8 | 51.7 | +18 |
| **At year-end** | | | |
| Total invested capital | $2,564.5 | 2,358.5 | + 9 |
| Shareholders' equity | $2,019.2 | 1,924.6 | + 5 |
| Total debt | $ 545.3 | 433.9 | +26 |
| Backlog | $1,001.9 | 1,687.6 | −41 |
| Employees | 000 45.0 | 57.0 | −21 |
| **Per share** | | | |
| Net earnings | $ 2.19 | 4.04 | −46 |
| Dividends paid | $ 0.77 | 0.66 | +17 |
| Stock price—high | $ 37.75 | 57.00 | −34 |
| low | $ 12.25 | 30.88 | −60 |

*Distribution of the 1982 Sales Dollar—Millions*

| | | |
|---|---|---|
| Materials & supplies | $2,159 | 52% |
| Wages & benefits | $1,471 | 35% |
| Taxes, Depreciation, Interest, Dividends, Retained Earnings | $531 | 13% |



## OPERATIONS REVIEW/Segment Summary

[Data relating to other Dresser divisions omitted in printing.]

Refractories & Minerals

| *Dollar Amounts in Millions* | | | 1982 | 1981 | 1980 | 1979 | 1978 | 1977 |
|---|---|---|---|---|---|---|---|---|
| Segment sales | | $ | 302 | 439 | 461 | 425 | 344 | 306 |
| Segment operating profit | | $ | (20.5) | 37.1 | 53.7 | 63.7 | 40.9 | 43.5 |
| Segment margin | | % | (6.8) | 8.5 | 11.7 | 15.0 | 11.9 | 14.2 |
| Sales—quarterly | | | | | | | | |
| First | 1/31 | $ | 83 | 101 | 112 | 97 | 76 | 73 |
| Second | 4/30 | $ | 87 | 113 | 124 | 106 | 74 | 77 |
| Third | 7/31 | $ | 72 | 120 | 107 | 110 | 94 | 79 |
| Fourth | 10/31 | $ | 60 | 105 | 118 | 112 | 100 | 77 |
| Segment total | | $ | 302 | 439 | 461 | 425 | 344 | 306 |
| Sales—geographic | | | | | | | | |
| United States | | $ | 224 | 327 | 328 | 339 | 285 | 244 |
| Canada | | $ | 32 | 48 | 57 | 39 | 33 | 30 |
| Latin America | | $ | 15 | 23 | 20 | 9 | 5 | 7 |
| Europe | | $ | 10 | 17 | 28 | 23 | 12 | 13 |
| Mid & Far East, Africa | | $ | 21 | 24 | 28 | 15 | 9 | 12 |
| Segment total | | $ | 302 | 439 | 461 | 425 | 344 | 306 |
| Sales—product area | | | | | | | | |
| Drilling fluid systems | | $ | | | | | | |
| Petroleum services | | $ | | | | | | |
| Bits, tools & rigs | | $ | | | | | | |
| Dispensing systems | | $ | | | | | | |
| Compressors & pumps | | $ | | | | | | |
| Power systems | | $ | | | | | | |
| Environmental systems | | $ | | | | | | |
| Refractory products | | $ | 279 | 396 | 398 | 358 | 298 | 265 |
| Mineral products | | $ | 23 | 43 | 63 | 67 | 46 | 41 |
| Const. equipment | | $ | | | | | | |
| Mining equipment | | $ | | | | | | |
| Controls | | $ | | | | | | |
| Tools and abrasives | | $ | | | | | | |
| Industrial equipment | | $ | | | | | | |
| Segment total | | $ | 302 | 439 | 461 | 425 | 344 | 306 |
| Sales—product type | | | | | | | | |
| Capital goods | | $ | 2 | 3 | 2 | 4 | 1 | 1 |
| Expendable goods | | $ | 300 | 436 | 459 | 421 | 343 | 305 |
| Segment total | | $ | 302 | 439 | 461 | 425 | 344 | 306 |
| Backlog—quarterly | | | | | | | | |
| First | 1/31 | $ | −6 | 99 | 137 | 118 | 90 | 68 |
| Second | 4/30 | $ | 63 | 98 | 148 | 133 | 108 | 73 |
| Third | 7/31 | $ | 58 | 79 | 112 | 134 | 95 | 79 |
| Fourth | 10/31 | $ | 49 | 62 | 93 | 127 | 92 | 79 |
| Capital expenditures | | $ | 16 | 13 | 17 | 29 | 26 | 23 |
| Research & engineering | | $ | 9 | 10 | 11 | 10 | 9 | 7 |
| Assets | | $ | 221 | 245 | 266 | 256 | 222 | — |
| Depreciation, etc. | | $ | 14 | 14 | 14 | 16 | 15 | — |
| Employees | | 000 | 3.3 | 5.3 | 5.5 | 7.1 | 7.0 | 6.5 |

* * * *

OPERATIONS REVIEW/
Refractories and minerals segment

Scope of operations

This segment provides technology and specialized refractory products to the high-temperature natural resource industries—the largest of which is steel.

Overview

These basic industries represent the industrial base of the world and have been adversely affected by the global recession as well as by structural changes arising from the significant increase in energy prices, inflation, and reduced demand for basic commodities. In the United States, they have been further penalized by environmental regulations, high-cost labor, obsolete facilities, and intensified international competition.

The weak market conditions were most evident in the domestic steel industry during the past year, as output was the lowest in over two decades and 36 percent below the 1981 level. The industrial sectors of the economy account for about two-thirds of steel consumption in this country, and all sectors have been severely depressed by general economic conditions.

Results

Segment sales declined 31 percent to $302 million in 1982 from $439 million in 1981 and accounted for 7 percent of total Dresser sales, compared to 10 percent in the prior year. Physical volume declined 32 percent.

Internationally, the worldwide recession adversely affected refractory markets. Foreign sales revenues declined 30 percent to $78 million from $112 million in 1981.

The weak product demand resulted in strong competitive pressures in the marketplace that, coupled with



higher costs, resulted in the segment's $20 million operating loss in 1982, compared to an operating profit of $37 million a year earlier.

Research and engineering expenditures of $9 million were down slightly from the 1981 level of $10 million. Most of the spending was related to refractory research at the Garber Research Center of Dresser's Harbison-Walker operations. Research projects were directed toward product and process innovation that leads to value-added results. Dresser's refractory leadership is largely related to the development of solutions to high-temperature process problems rather than to simple product offerings.

U.S. STEEL OUTPUT

*Millions of Tons*

| Years ended 10/31 | |
|---|---|
| 1982 | 80 |
| 1981 | 125 |
| 1980 | 111 |
| 1979 | 139 |
| 1978 | 133 |
| 1977 | 124 |

Capital expenditures rose to $16 million from $13 million in 1981 and involved programs to increase productivity, reduce costs, and add equipment for the production of new products.

At year-end, employment was off 38 percent to 3,300 from 5,300 at the same year-earlier date and reflected the segment's depressed market environment.

*Refractory products*—Sales revenues of refractory products amounted to $279 million and accounted for 92 percent of the segment's 1982 sales. Facilities were added to produce tundish boards used in the continuous casting process. Other refractory plants enhanced their capability to produce components for slide gate systems used in some steelmaking processes.

SALES REVENUES

*In Millions*

| | |
|---|---|
| 1982 | $302 |
| 1981 | $439 |
| 1980 | $461 |
| 1979 | $425 |
| 1978 | $344 |
| 1977 | $306 |

Technology and facility improvements provided the means for the segment to maintain its recognized premium quality and strong value analysis programs.

*Minerals*—The basic functions of the segment's mineral operations are geological exploration, mineral evaluation and development, mining, and mineral processing and marketing. Production from a jointly owned lead mine in Missouri generates most of the operations' revenues.

OPERATING PROFIT

*In Millions*

| | |
|---|---|
| 1982 | ($20) |
| 1981 | $37 |
| 1980 | $54 |
| 1979 | $64 |
| 1978 | $41 |
| 1977 | $43 |

The minerals product area reported a 47 percent decline in sales revenues to $23 million from $43 million in 1981. The lower level of 1982 sales primarily reflected the effect of the recession and reduced lead prices.

Outlook

Market conditions are not expected to show material improvement until major consumers of steel—the construction, automobile, and agricultural industries—begin to recover from the current economic recession. The segment also will benefit from the revival of steel modernization programs that were deferred or slowed during 1982.



However, the domestic steel industry still must deal with the competition of low-cost imports and the negotiation of its labor contract that expires August 1, 1983. If it succeeds in limiting steel imports and achieves a moderate 1983 labor contract without a strike, then the industry and its suppliers can look for improvement in operating levels and profitability as the economy recovers.

1982 SALES BY
MAJOR PRODUCT AREA

*Percent of Total*

| | |
|---|---|
| Refractory Products | 92% |
| Mineral Products | 8% |

Longer term, the technology and skills developed for the refractories industry have applications in other areas. Within the field of industrial ceramics, for example, new products have been developed that provide excellent wear as well as heat resistance.

The segment also has considerable experience in the general field of industrial minerals that will enhance future growth prospects.

* * * *

[Pictures Omitted in Printing]

EXHIBIT B

**DRESSER'S**
**ANNUAL REPORT**
**1983**

* * * *

FINANCIAL HIGHLIGHTS

| *Dollars in Millions* *Except Per Share Data* | 1983 | 1982 | % Change |
|---|---|---|---|
| Sales revenues | $3,473.4 | 4,160.6 | −17 |
| Earnings before taxes | $ (81.6) | 232.7 | |
| Net earnings | $ 5.1 | 172.3 | −97 |
| Dividends paid | $ 64.1 | 60.8 | + 5 |
| At year-end | | | |
| Total invested capital | $2,526.2 | 2,564.5 | − 1 |
| Shareholders' equity | $1,952.9 | 2,019.2 | − 3 |
| Total debt | $ 573.3 | 545.3 | + 5 |
| Backlog | $ 896.8 | 1,001.9 | −10 |
| Employees | 40,500 | 45,000 | −10 |
| Per share | | | |
| Net earnings | $ 0.06 | 2.19 | −97 |
| Dividends paid | $ 0.80 | 0.77 | + 4 |
| Stock price—high | $ 25.50 | 37.75 | −32 |
| low | $ 15.00 | 12.25 | +22 |

* * * *

REFRACTORIES AND MINERALS

Profile

This segment supplies heat containment products (refractories) to industries utilizing high-temperature processes. The market is divided approximately 60/40 percent between the steel industry and a variety of other industrial customers. Refractory products are consumed in production processes, and demand is directly proportional to the user's operating rate.



Market conditions

The performance of the country's basic industries—often referred to as the "smokestack" industries—has been adversely affected by the recession, severe foreign competition, and structural problems related to high-cost labor, obsolete facilities, and product substitutions.

Weak market conditions were highly evident in the domestic steel industry, as output in 1982 and 1983 was the lowest in over 20 years or 40 percent below the average for the previous decade.

The industrial side of the economy is in the early stages of market recovery. The demand for refractory products, while stronger than it has been since mid-1982, remains below levels that existed prior to the economic downturn and those needed to generate acceptable profitability for the segment over the longer term.

Domestic steel output is expected to rise by 10 to 15 percent in 1984, reflecting the continued expansion of the industrial sectors of the economy, and this could push steel industry operating rates to more than 70 percent.

Trends such as continuous casting of steel, production of lighter automobiles, and reduced investment by other basic industries will combine with the strong role of low-cost imports to cause further productive capacity reduction in the U.S. steel industry over the balance of the decade. The effect of this trend on the refractory market can be partially offset, however, by capitalizing on the growing potential from modernization programs and technological upgrading within the steel industry as well as future expansion in other industrial markets.

Operating results

Sales revenues were off 11 percent for the year to $269 million and compare with $302 million in 1982. Fourth quarter revenues rose 25 percent from year-earlier levels

primarily because of the improved conditions in the domestic steel industry. The industry produced 20 percent more steel in the last half of Dresser's fiscal 1983 than it did during that period of 1982.

Industrial capacity utilization in the U.S. is at its highest levels in more than two years and, with economic indicators remaining positive, capital goods industries have begun stimulating steel shipments, expanding the need for a variety of refractory products used in various steps of steelmaking. Other high-temperature production processes also are benefiting.

Over three-fourths of the segment's revenues are generated from domestic sales, which amounted to $211 million in 1983 and compare with $224 million from the previous year. Foreign revenues were $45 million, down from $56 million in 1982, and exports totaled $13 million, off from $22 million a year earlier.

Low market activity, competitive pricing, and substantial one-time costs incurred in closing several inefficient plants caused the segment to operate at a loss for the second consecutive year. The fiscal 1983 operating loss totaled $15 million, a reduction of $6 million from the year-earlier operating loss. However, as a result of cost reduction programs, the segment turned profitable in the fourth quarter following six consecutive quarterly losses.

The backlog of unshipped refractory orders amounted to $45 million, down from $56 million three months earlier and $49 million at October 31, 1982.

Refractory products accounted for 93 percent of the segment's 1983 revenues, which declined 10 percent to $250 million from $279 million in 1982. This product area continues to benefit from the trend toward more efficient steelmaking furnaces and continuous casting ad-



vances and is focusing on advanced-technology applications. Late in 1983, for example, the segment divested itself of the DURO brand of refractories that provided acid and abrasion resistance capabilities but had lower profit potential than the newer-generation proprietary products that have made Dresser's Harbison-Walker Division the world's leading supplier of refractories.

Mineral product revenues were off slightly at $19 million from $23 million a year earlier. These revenues constituted 7 percent of the segment total in 1983 and were derived primarily from the segment's joint-venture lead mine.

## Internal actions

The segment closed five refractory plants, sold a refractory product line that no longer dovetailed with long-term objectives, and took other decisive internal actions to lower costs and enhance efficiency. However, segment employment, which was reduced by a substantial 38 percent in 1982, held relatively steady during much of 1983 and ended the year at 3,500, up from 3,300 at October 31, 1982.

Capital spending was off slightly to $15 million from $16 million in 1982 and, as in the prior year, was allocated primarily to equipment additions to facilitate efficiency, since market conditions necessitated the down sizing of existing capacity in refractory operations.

This segment continued to adapt its research and development efforts to the competitive transformation domestic steel producers are undergoing. Most of the segment's $5 million in research and engineering spending in 1983 was to maintain technological leadership through the development of new and improved refractory products.

## Outlook

Segment sales revenues bottomed in the first fiscal quarter of 1983 and have shown gradual improvement since in response to the domestic steel industry utilizing more of its productive capacity and stepping up modernization programs.

The cost-cutting measures adopted in 1982 and 1983 have substantially lowered break-even points and provide the opportunity for earnings leverage as the economic recovery continues to expand.

[Pictures and Graphs Omitted in Printing]



## SUMMARY OF SEGMENT OPERATIONS

| *Dollars in Millions* | | 1983 | 1982 | 1981 | 1980 | 1979 | 1978 |
|---|---|---|---|---|---|---|---|
| **Sales analysis** | | | | | | | |
| *quarterly* | | | | | | | |
| First ——— 1/31 | $ | 59 | 83 | 101 | 112 | 97 | 76 |
| Second —— 4/30 | $ | 63 | 87 | 113 | 124 | 106 | 74 |
| Third —— 7/31 | $ | 72 | 72 | 120 | 107 | 110 | 94 |
| Fourth — 10/31 | $ | 75 | 60 | 105 | 118 | 112 | 100 |
| Total | | 269 | 302 | 439 | 461 | 425 | 344 |
| *geographic* | | | | | | | |
| United States | $ | 211 | 224 | 327 | 328 | 339 | 285 |
| Canada | $ | 29 | 32 | 48 | 57 | 39 | 33 |
| Latin America | $ | 13 | 15 | 23 | 20 | 9 | 5 |
| Europe | $ | 3 | 10 | 17 | 28 | 23 | 12 |
| Mid & Far East, Africa | $ | 13 | 21 | 24 | 28 | 15 | 9 |
| Total | $ | 269 | 302 | 439 | 461 | 425 | 344 |
| *product area* | | | | | | | |
| Refractory products | $ | 250 | 279 | 396 | 398 | 358 | 298 |
| Mineral products | $ | 19 | 23 | 43 | 63 | 67 | 46 |
| Total | $ | 269 | 302 | 439 | 461 | 425 | 344 |
| *product type* | | | | | | | |
| Capital goods | $ | 1 | 2 | 3 | 2 | 4 | 1 |
| Expendable goods | $ | 268 | 300 | 436 | 459 | 421 | 343 |
| Total | $ | 269 | 302 | 439 | 461 | 425 | 344 |
| Operating profit | $ | (14.5) | (20.5) | 37.1 | 53.7 | 63.7 | 40.9 |
| *% of sales* | % | (5.4) | (6.8) | 8.5 | 11.7 | 15.0 | 11.9 |
| Backlog | | | | | | | |
| First ——— 1/31 | $ | 51 | 76 | 99 | 137 | 118 | 90 |
| Second —— 4/30 | $ | 52 | 63 | 98 | 148 | 133 | 108 |
| Third —— 7/31 | $ | 56 | 58 | 79 | 112 | 134 | 95 |
| Fourth — 10/31 | $ | 45 | 49 | 62 | 93 | 127 | 92 |
| Capital spending | $ | 15 | 16 | 13 | 17 | 29 | 26 |
| Research & eng. | $ | 5 | 9 | 10 | 11 | 10 | 9 |
| Assets | $ | 210 | 221 | 245 | 266 | 256 | 222 |
| Depreciation, etc. | $ | 12 | 14 | 14 | 14 | 16 | 15 |
| Employees | 000 | 3.5 | 3.3 | 5.3 | 5.5 | 7.1 | 7.0 |

* * * *

EXHIBIT C

To:
See Attached List

Date: April 26, 1982

From:
L. G. Sanberg
Pittsburgh Office

Refer:

Subject:
Elective Termination Program

CC: File

As a result of depressed business conditions, Harbison-Walker has announced to all domestic salaried employees who are presently age 60 or over, or who will become age 60 during 1982, an Elective Termination Program.

Highlights of the program are:

1.) Voluntary participation;

2.) Termination date of May 31, 1982; and

3.) Depending upon length of service, either a lump-sum settlement or a modified salary continuation plan.

Samples of the announcement forwarded to eligible employees are attached for your understanding. In the eventuality any eligible employee under your supervision requires clarification of the program, please refer them directly to the Pensions and Insurance Department.

/s/ LGS

LGS/dlh

Attachments



L. G. Sanberg
Vice President—Industrial Relations

Telephone 412-567-6318

April 23, 1982

LETTER TO EMPLOYEES WITH TEN (10) OR MORE YEARS OF SERVICE

Dear

As you are aware, Fiscal 1981 was not a good year for Harbison-Walker Refractories and Fiscal 1982 could be even worse. With the production of steel, glass, cement, aluminum and copper steadily plummeting, we are experiencing extremely depressed business conditions. In response to these conditions, we have implemented select salaried personnel reductions in attempting to control capacity costs.

As part of this continuing effort, an Elective Termination Program is being offered to all domestic salaried employees that are presently age 60 or over, or who will become age 60 during 1982. Participation in this program is *totally voluntary* on your part, and provides two alternatives for your consideration.

Under the first option, the program would pay a lump-sum amount on the termination date of May 31, 1982, equal to one week's salary for every full year of service, up to a maximum of 26 weeks. This means that you would receive based on your years of service and your current salary.

Under the second option, the program would provide you, for a period of two years after your termination, monthly payments equal to 25% of your current monthly salary. This means that you would receive per month for two years beginning June 1, 1982.

As you know, if you decide to participate in this special program and terminate on the date provided in the

program, you may request immediate payment of reduced pension benefits or wait until age 65 for normal deferred benefits under the plan. Either way, your pension benefit will be based on your years of pension service accrued to May 31, 1982 and pension plan provisions. You will also receive 1982 vacation pay of approximately for weeks of vacation plus pro-rata vacation pay if you retire. Of course, pay for any vacation time already taken will be deducted from the regular vacation pay.

Your decision whether to participate in this special program is a very personal matter requiring your careful consideration of a multitude of factors. Again, I would like to stress that your election is totally voluntary.

The above represents the special features of the program. Other post-employment benefits such as group health insurance and life insurance would be available according to the normal plan provisions applicable to you.

If you elect this program, your effective termination date will be May 31, 1982. If you have an interest in the program, please advise R. R. Leasure on or before May 14, 1982, in order that we can review in detail your pension calculations and options.

Very truly yours,

/s/ L. G. Sanberg

LGS/dlh

Enclosure

cc: R. R. Leasure



## EXHIBIT D

IRON AND STEEL MARKETING SUPPORT GROUP
(EXCLUDING SECRETARIES) JUNE 1982

| Name | Title | Age As Of June 1, 1982 | Seniority Date |
|---|---|---|---|
| L.L. Sheatsley | General Products Mgr. | 46 | 7/61 |
| C.D. Jamison | Applications Engineer | 55 | 5/59 |
| C.F. Wenrich | Mgr.-Special products | 54 | 6/48 |
| R.J. Murray | Product Mgr. | 39 | 10/68 |
| S.R. Pavlica | Product Mgr. | 43 | 4/63 |
| R.L. Hart | Product Mgr. | 44 | 10/73 |
| T.W. Lewis | Group Products Mgr. | 42 | 8/64 |
| D.E. Moniot | Product Mgr. | 39 | 6/65 |
| R.C. Wyda | Sr. Products Specialist | 50 | 2/58 |
| E.F. Brieck | Installation Specialist | 55 | 6/65 |
| A.G. Malarich | Installation Specialist | 59 | 8/66 |
| H.J. Faust | Installation Specialist | 39 | 9/66 |
| W.L. Meixell | Installation Specialist | 59 | 1/80 |
| C.L. Maus | Product Analyst | 26 | 6/78 |
| D.N. Heath | Sales Correspondent | 33 | 9/70 |
| H.A. Marsh | Sr. Products Specialist | 57 | 3/76 |
| D.R. Westphal | Product Analyst | 22 | 8/81 |
| M.K. Clark (Hammersly) | Product Analyst | 24 | 6/79 |
| J. Bortner | Product Analyst | 26 | 8/79 |
| D.H. Wright | Product Analyst | 24 | 8/81 |
| R.C. Kaldon | Product Mgr. | 33 | 8/74 |
| M.J. Ducato | Product Analyst | 24 | 4/81 |
| G.E. Shortman | Product Analyst | 26 | 8/81 |
| K.D. Regan | Product Analyst | 22 | 6/81 |
| D.L. Smith | Product Specialist | 33 | 6/70 |
| D.D. Huminsky | Product Specialist | 48 | 1/74 |
| B.L. Bailey | Product Analyst | 22 | 6/81 |
| R.L. Ihrig** | Product Analyst | 23 | 6/80 |
| A.G. Dean | Product Specialist | 52 | 3/79 |
| J.K. Miller | Sr. ProductSpecialist | 54 | 12/60 |
| P.H. Conley | Product Analyst | 27 | 4/80 |
| J.J. Schwerer | Product Analyst | 24 | 6/80 |
| G.C. Dodds | Product Analyst | 23 | 6/81 |

**Resigned 7/9/82

Total Number of Employees, Excluding Ihrig ..... 32

Average Age ..... 38.25

Total Number of Employees Age 40 or Older ..... 14 (43.75%)

## EXHIBIT E

IRON AND STEEL MARKETING GROUP
AS OF DECEMBER 1, 1982

| Name | Title | Age As Of June 1, 1982 | Seniority Date |
|---|---|---|---|
| L.L. Sheatsley | General Products Mgr. | 46 | 7/61 |
| C.D. Jamison | Applications Engineer | 55 | 5/59 |
| C.F. Wenrich | Mgr.-Special Products | 54 | 6/48 |
| R.J. Murray | Product Mgr. | 39 | 10/68 |
| S.R. Pavlica | Product Mgr. | 43 | 4/63 |
| R.L. Hart | Product Mgr. | 44 | 10/73 |
| T.W. Lewis | Group Products Mgr. | 42 | 8/64 |
| D.E. Moniot | Product Mgr. | 39 | 6/65 |
| R.C. Wyda | Sr. Products Specialist | 50 | 2/58 |
| H.A. Marsh | Sr. Products Specialist | 57 | 3/76 |
| M.K. Clark (Hammersly) | Product Analyst | 24 | 6/79 |
| J. Bortner | Product Analyst | 26 | 8/79 |
| R.C. Kaldon | Product Mgr. | 33 | 8/74 |
| M.J. Ducato | Product Analyst | 24 | 4/81 |
| K.D. Regan | Product Analyst | 22 | 6/81 |
| D.D. Huminsky | Product Specialist | 48 | 1/74 |
| B.L. Bailey | Product Analyst | 22 | 6/81 |
| A.G. Dean | Product Specialist | 52 | 3/79 |
| J.K. Miller | Sr. Product Specialist | 54 | 12/60 |
| P.H. Conley | Product Analyst | 27 | 4/80 |
| W.N. Porter | Sr. Products Specialist | 31 | 6/75 |

Total Number Employees ..... 21

Average Age ..... 39.61

Average Age (Including Ages of Faust, Westphal and Shortman, Who Were Eventually Recalled) ..... 38.29

Total Number Employees Age 40 or Older ..... 11(52.3%)



## EXHIBIT F

EMPLOYEES LAID OFF FROM IRON AND
STEEL MARKETING GROUP—JULY-NOVEMBER, 1982

| Name | Title | Age As Of 6/82 | Seniority Date | Date Of Layoff |
|---|---|---|---|---|
| E.F. Brieck | Installation Specialist | 55 | 6/65 | 7/2/82 |
| W.E. Meixell | Installation Specialist | 59 | 1/80 | 7/9/82 |
| C.L. Maus | Product Analyst | 26 | 6/78 | 7/9/82 |
| G.C. Dodds | Product Analyst | 23 | 6/81 | 7/9/82 |
| J.J. Schwerer | Product Analyst | 24 | 6/80 | 7/9/82 |
| D.L. Smith | Product Specialist | 33 | 6/70 | 7/13/82 |
| A.G. Malarich | Installation Specialist | 59 | 8/66 | 7/30/82 |
| D.N. Heath | Sales Correspondent | 33 | 9/70 | 8/2/82 |
| D.H. Wright | Product Analyst | 24 | 8/81 | 11/12/82 |
| G.E. Shortman | Product Analyst | 26 | 8/81 | 11/12/82 |
| D.R. Westphal | Product Analyst | 22 | 8/81 | 11/18/82 |
| H.J. Faust | Installation Specialist | 39 | 9/66 | 11/18/82 |

Average Age ..... 35.25

Average Age (Excluding Faust, Shortman and Westphal) ..... 37.33

Total Employees Laid Off Who Were Age 40 or Older ... 3 (25%)

EXHIBIT G

IRON & STEEL MARKET

*Title: Products Specialists*

*Reports To:* Products Manager

*Objectives:*

To develop the marketing concept in the specific application areas assigned by the Products Manager. To aid in developing plans for product improvement and to make recommendations for profit improvement.

*Functions:*

1. To be technically competent in the specific applications assigned to him and be thoroughly familiar with all products that can be used in this application area.
2. Work closely with field sales representatives to keep them familiar with the changing technology in these application areas.
3. Make sales calls with the Field Sales Representative where the potential justifies it to promote ideas and acquaint customers with the technical capabilities of Harbison-Walker.
4. Make field calls with the sales representatives to investigate complaints and also to develop detailed service experience in his particular application area.
5. Through his Products Manager and General Products Manager work with the Product Development Department to keep them informed regarding the changing technology and needs in his specific application area.



6. Work with the Product Development Department as necessary in the development, introduction and promotion of new products in his assigned application area.
7. To work closely with the Applications Engineer in the development of new refractory concepts for his specific application area.
8. To constantly be alert for products and applications that lend themselves to joint marketing efforts, increased volume and greater profitability.
9. Prepare reports as directed.
10. Be fully informed on competitors products used to his application area.
11. Will conform to Division practices and procedures.

EXHIBIT H

Location: Iron and Steel

JOB DESCRIPTION

*Exempt*

Position Title: Installation Specialist

Reports to: Products Manager

Objective: Aids Iron and Steel customers in proper installation of products to provide maximum customer satisfaction and maintains complete feedback of expert observation of refractory application.

Primary Responsibilities:

1. Provides expert help to construction, maintenance and operating personnel of customers to aid them in the proper use of our products in Iron and Steel Market.
2. Develops improved, original and imaginative concepts of installation practices to better meet customer requirements.
3. Reports and analyzes value of new customer processes, practices and refractory uses.
4. Reports details about the Company and competitive products observed in customer plant.
5. Evaluates Company products observed identifying needed improvements to meet the market conditions.
6. Reports installation progress to Field Sales Representative during the time spent in his customer's plant.
7. Prepares reports, analyses and plans as required by his Products Manager.
8. Conforms to Company policies and procedures.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

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[Title Omitted in Printing]

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**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

AND NOW, this 29th day of July, 1985, come Plaintiffs by and through their undersigned counsel, and file their Opposition to Defendant's Motion for Summary Judgment, as follows:

STANDARD FOR GRANT OF MOTION FOR SU MARY JUDGMENT

In the instant action, this court should deny Defendant's Motion for Summary Judgment, because it is an extreme remedy and would deprive Plaintiffs of their right to a jury trial. As stated by the court in *Douglas vs. Anderson*, 656 F.2d. 528 (Ninth Circuit, 1981), "We recognize that summary procedures should be used judiciously, particularly in cases involving issues of motivation or intent." *Id.*, et 535. In the first, third and fourth causes of action set forth in Plaintiff's Complaint, the intent or motivation of Defendant is an element of Plaintiff's proof, and this court should deny Defendant's Motion for Summary Judgment because there is an issue of material fact regarding Defendant's motivation or intent.

As stated in numerous cases, "All doubts are to be resolved and inferences drawn in favor of the nonmoving party." *Continental Insurance Company vs. Bodie*, 682 F.2d. 436, 438-39 (Third Circuit., 1982) and *Hollinger vs. Wagner Mining Equipment Company*, 667

F.2d. 402, 405 (Third Circuit., 1981). Numerous other cases stand for the same proposition. For example in *Yuba Goldfields, Inc. vs. United States*, 723 F.2d. 884 (Federal Circuit., 1983), the court stated the following: "Because the Summary Judgment remedy can be harsh in its finality, its application must be accompanied by great care in respect of the entire record and the relevant law." Also, in *D.L. Auld Company vs. Chromer Graphics Corporation*, 714 F.2d. 1144 (Federal Circuit, 1983), the court stated the following:

> "Summary Judgment is an important means of conserving judicial and other resources, but it must be carefully employed in appropriate cases for an improvident grant may deny a party a chance to prove a worthy case and an improvident denial may force upon a party and the court an unnecessary trial."

## ARGUMENT

In a case cited by Defendant, *McCorstin vs. United States Steel Corporation*, 621 F.2d. 749 (Fifth Circuit., 1980), the Appellate Court reversed and remanded a district court decision against an employee, reversing the district court's grant of summary judgment in favor of the employer. In circumstances even more in favor of the employer than in the instant case, the court in *McCorstin* stated that the grant of summary judgment "was clearly in error because the factual reason for [the employee's] discharge was hotly contested and genuinely in dispute." *Id.*, et 751 footnote four. The Appellate Court was aware that the employee had a very "checkered" employment history with the employer, and had even been demoted on several occasions, the employee had received performance evaluations which in the words of the court were "increasingly deteriorating" in nature, and the employee had very limited experience in a particular department, which would have reduced the desirability of his being moved to another job in that department,



the employee was not replaced by someone less than age 40, and there was some evidence that the employee had been fired for cause rather than having been subjected to a reduction in force. Even under all of such circumstances, the Appellate Court ruled that the district court had erred in granting the employer's Motion for Summary Judgment regarding the employee's age discrimination claim.

Unlike the employee in *McCorstin*, Eugene Brieck, the Plaintiff in the instant action, had a very good employment history with Defendant, even according to Defendant's own witnesses. Plaintiff testified in his deposition that he had not been reprimanded, suspended, nor had a pay raise "held back", had never been disciplined, and never had so much as a "bawling out behind closed doors" during the entire seventeen years of his employment with Defendant (Brieck deposition page 60). Moreover, Plaintiff had been sent out on international assignments "dozens" of times, and Plaintiff testified that none of the other installation specialists had been given such tasks; such tasks involved great responsibility, and yet Plaintiff testified that he was the only one of the installation specialists who was entrusted with such assignments (Brieck deposition page 57). Moreover, contrary to various allegations appearing in Defendant's Memorandum in Support of Motion for Summary Judgment, Plaintiff had the longest continuous length of service with Harbison-Walker, of all the installation specialists, and he had very substantial experience in blast furnace cast houses and with all kinds of installation specialist activities. In the words of Plaintiff, "Most people would specialize in a particular furnace, I hit them all", (Brieck deposition page 10), and he performed all of the functions of the installation specialist. (Brieck deposition pages 10-11, 14-15, 21, 42-43). Moreover, Plaintiffs had received in the period of time shortly before his layoff, four different indications from Defendant that he would not be laid off in the near future, as follows:

1. In August of 1980, Larry Sheatsley, one of Plaintiff's superiors, in the presence of Donald Jamison, Plaintiff's immediate supervisor, indicated to Plaintiff that he did not have to worry about being laid off (Brieck deposition, pages 45-48);

2. In February, 1982, Sheatsley informed Plaintiff, in response to a direct question from Plaintiff ("What's the chance of me getting laid off?") Mr. Sheatsley said to Plaintiff, "You won't have nothing to worry about." (Brieck deposition, pages 34-35, 45);

3. In the spring of 1982, Plaintiff received the Spring, 1982, edition of the Dresser Industries company newsletter adressed to its employees, which contained a front-page article which was a verbatim record of an interview with Ralph Ytterberg, Senior Vice-President Human Resources of Dresser Industries, in which Mr. Ytterberg said in response to the question, "How do you determine who gets laid off?", the following:

> . . . [L]ayoffs are implemented only after an extensive review of alternatives. Obviously, layoffs, when they are necessary, occur in departments or operating units most affected by the business decline. Length of company service and skill requirements necessary to carry out the reduced business activities are the most important considerations. We try to do what is right and fair. . . ." (Paragraph 15 of Plaintiff's Complaint, and Nicolella deposition exhibit #2).

Plaintiff relied upon this statement from such a high-ranking person in the overall personnel administration hierarchy of the company (Brieck deposition page 38); as even Defendant's own documents indicate, Plaintiff had more continuous plant service than any of the other installation specialists (Defendant's Pretrial Statement, pages 3-4; document submitted to the Pennsylvania Human Relations Commission by Defendant), and he felt that he was the most qualified of the four installation specialists, and such belief was supported by the good employment history of Plaintiff with Defendant, his having received laudatory comments from customers and other employees regarding his work performance (Brieck affidavit; Sheatsley deposition, pages 6-8; 10-12, 15, 54), and other matters set forth herein.



4. By note dated March 24, 1982, Donald Jamison, the immediate supervisor of Plaintiff, informed Plaintiff of a merit raise that he was granted, effective retroactive to March 1, 1982, and in such note indicated that "The merit raise is well deserved and we hope that we can continue to reward you for your good work." Later in the same note, Jamison acknowledged that Plaintiff was being sent on an international assignment to Turkey, and he closed the note by saying, "Again, thanks for your fine efforts."

When Defendant made the decision to keep Hugh Faust and Al Malarich for retention and not for lay-off in the first lay-off announced July 2, 1982, Faust was under age 40 and Malarich was in the protected age group. Malarich was then laid off shortly thereafter, on July 30, 1982, thus leaving Faust, the only one of the four installation specialists under age 40, as the only installation specialist retained. (Defendant's Pretrial Statement, pages 3-5) Plaintiff testified that Faust was not experienced as an installation specialist, that Faust had been "mostly an office boy", one who performed odd jobs around the office, one who handled the office's rental cars, who did "nothing technical", and that "he was more like a gopher . . . [He was] the odd man out . . . If there was an installation, he didn't have nothing to do, he would go out and sub for them. He never went on a

job, to my knowledge, by himself. He was always with somebody . . . He had no training in this particular type of field." (Brieck deposition, pages 31-32). Mr. Brieck also testified that although Faust helped in the quotation of prices, he could not make drawings, sketches or develop specifications, which Brieck could. (Brieck deposition, pages 32-33)

Faust testified that when he first came to work with Defendant in September, 1966, he held the position of assistant correspondent, continued in that position for four years, then became correspondent and he held that position for the next five or six years; then, in approximately 1975 or 1976, he became staff correspondent, a position he held for approximately three years, and only when he became a staff correspondent did he first have any experience with the duties of an installation specialist, and then he went out on installations only on approximately two or three days a month, or in Faust's words, his work on installations "wasn't very often," "it was a very small percentage" of his total time spent as an employee of Defendant. (Faust deposition, pages 9-15) Faust could not testify as to when he first acquired the position of installation specialist, but one must assume that it was not before 1978 or 1979. Faust testified that after he became an installation specialist, even then he did not go out on the road and do installations as frequently as the other installation specialists, about fifty per cent of his work days being spent on installations, and about fifty per cent being spent in the office; included in the office work he would do would be "margins" and "gofer" work, a role which Faust frankly testified was his, when he testified as follows:

> Q. Any other kind of office work you did as an installation specialist?
>
> A. I can't think of anything offhand. I usually do a lot of things that people just tell me to do. Like a car needs fixed, got something out at advertising that we need. Whatever. Even drove a forklift down the warehouse one time.
>
> Q. So if somebody had to go for something, you might have to do that?
>
> A. Not have to, I would be asked nicely to do it. I would volunteer.
>
> Q. Excuse me for degrading your role, but would part of you [sic] job be to be a gofer?
>
> A. Sure. I don't mind doing that. It's something different.
>
> Q. I'm not saying anything bad about it, but part of your job was to be the office handyman?
>
> A. Yeah. That was part of being staff correspondent. I like doing things for people. The department as a whole. It makes things go easier. Everydepartment needs one. (Faust deposition, pages 21-22)



Defendant's story about Faust's superior qualifications seems doubtful at best when seen in light of the above very frank remarks of Mr. Faust. At best, he had been an installation specialist only since approximately 1978 or 1979, when Brieck had been an installation specialist continuously from his initial date of employment with Defendant, in June, 1965. Moreover, Mr. Brieck testified that he had had prior experience in bricklaying, masonry, and specifically in industrial bricklaying, prior to coming to work with Defendant in June, 1965. (Brieck deposition, pages 7-10) Furthermore, in his June 17, 1982, memorandum purporting to justify the furlough of Plaintiff and three other employees with over 15 years service with Defendant, John M. Nicolella, Manager of Personnel of Defendant, stated that Brieck and Faust had exactly the same ratings in 1981 and 1982, "FS", which apparently stood for "fair to satisfactory" (Nicolella deposition exhibit #5, page two). It is inconsistent for Nicolella to say that Mr. Brieck was the "least qualified" of the four installation specialists, and in the same memo-

randum, which indicates that Plaintiff had more continuous service than Faust, say that the ratings of Faust and Brieck were the same in 1981 and 1982.

Faust testified that he was laid off in November, 1982, and was called back effective August, 1983, as a full-time employee, and that since that time he was spending approximately 75 per cent of his working time on the road, doing installations, thus leaving him only approximately 25 per cent of his time for the apparently, if Defendant's story is to be believed, all-important office work. With regard to the type of office work which Faust has performed since his recall in August, 1983, he testified that he did reports of his installations, did "margins", apparently did "some filing", and "also some gofer work like getting drawings out to the works, to salesmen." (Faust deposition, pages 30-31) Faust admitted that any installation specialist would have to prepare reports regarding the installations, as any installation specialist would do, and Mr. Brieck testified that he also had prepared installation reports when he was in the office. (Faust deposition, page 31; Brieck deposition, pages 19, 23, 24)

As stated by the court in *Bernstein v. Consolidated Foods Corporation*, 36 FEP Cases 1333 (N.D. Ill., 2/18/84), in denying the defendant-employer's motion for summary judgment, the moving party has the burden of showing that there is no genuine issue of material fact. *Id.*, at 1337 note 2, citing *Korf v. Ball State University*, 726 F.2d 1222 (7th Cir., 1984). Defendant has not met its burden of showing that there is no genuine issue of material fact. The decision to retain Faust, the only one of the four installation specialists under the age of 40, is highly suspect. Moreover, Faust is the only one of the four installation specialists who was recalled as a permanent employee and who is still employed as an employee of Defendant. Larry Sheatsley testified that no consideration was given to recalling or rehiring Mr.



Brieck rather than Faust in the middle part of 1983. (Sheatsley deposition, page 38)

In the case of *Miles v. M.N.C. Corporation*, 36 FEP Cases 1289 (11th Cir., 1/15/85), the court of appeals held that an employer's subjective evaluation of the quality of a black laid-off employee's work performance as compared to that of a white laid-off employee cannot, without more, be a legitimate basis for its decision to recall the white laid-off employee but not the black laid-off employee. As can be seen by the supporting materials that will accompany Plaintiffs' Supplemental Opposition to Defendant's Motion for Summary Judgment, the evaluation system utilized by Defendant was subjective in the extreme, and also such system had no means to evaluate each employee's performance objectively. The evaluation system utilized by Defendant was totally non-professional, and should be entitled to little or no weight.

## CONCLUSION

For the above reasons, and for the reasons to be supplied to the Court no later than August 1, 1985, in Plaintiffs' Supplemental Opposition to Defendant's Motion for Summary Judgment, Plaintiffs respectfully request that Defendant's Motion for Summary Judgment be denied, and that this case be set down for pretrial in the very near future.

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[Certificate of Service Omitted in Printing]

## DRESSER NEWS ARTICLE

DRESSER NEWS

An Equal Opportunity Employer M/F

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Spring 1982

Business at Dresser plants varies widely . . .

### Some plants forced to make employee layoffs

Like many large and diversified companies, Dresser's business performance oftentimes varies widely from one operating unit to another. These performance differences not only affect the profitability of the company as a whole, but play a significant role in the operations of individual divisions and plants. 1981 was a poor year for some Dresser facilities, with serious sales and profit losses making it impossible to maintain regular operations. Because of Dresser's diversification of products and markets, however, the overall future is positive for continued growth.

In this interview, Ralph Ytterberg, Senior Vice President—Human Resources, discusses the problem of employee layoffs at several Dresser locations, how layoff decisions are made, and the current business outlook.

Q. We frequently read in the business and financial pages that Dresser Industries' sales and profits continue at favorable levels, yet we have a substantial number of employees on layoff at many of our operating units. Why is this occurring?

A. Dresser is a highly diversified company. We are involved in over 100 different markets. Sales and earnings of some operating units, particularly those serving the oil and gas industry, are holding up very well. However, business in a few of our other operating units has dropped off substantially. Some are operating at a loss.



Basically, our national economy has slowed to the point that many of our customers just are not buying new equipment. And that means that some plants and divisions simply do not have enough work to support the number of employees they have had when business was good.

Q. How severe is the layoff problem?

A. It varies among the operating units. For a few it is very serious with more than 50 percent of the work force on layoff. For others, the layoffs are relatively minor. A number of operations have had no layoffs, of course.

Q. Have most of the layoffs affected only hourly workers?

A. Not at all. Our employment cutbacks have included both hourly and salaried employees at all levels.

Q. How do you determine who gets laid off?

A. I can assure you, we don't take layoffs lightly. They are very serious decisions, and we realize the seriousness of the impact on each household they affect. In fact, layoffs are implemented only after an extensive review of alternatives. Obviously, layoffs, when they are necessary, occur in departments or operating units most affected by the business decline. Length of company service and skill requirements necessary to carry out the reduced business activities are the most important considerations. We try to do what is right and fair. Layoffs are never made unless they are absolutely necessary. We recognize, though, that no one can cheerfully accept the loss of his or her job, regardless of how logical the decision is. It's a very serious problem for everyone and we do and must deal with layoffs accordingly.

Q. What steps exactly do you go through in considering a layoff, particularly when it is a group of management, administrative or professional employees?

A. The first step, of course, is to take a good reading of the near and long-term prospects for that particular operation. Is the downturn likely to be a short one, or

can we logically expect it to continue for months or even indefinitely? From there, our Group and Division managers begin to determine the number and types of jobs needed to operate at reduced levels.

The toughest part is next, of course, because it involves identifying individuals whose skills are most essential to the continuation of the business. As I said earlier, an important consideration is the number of years an employee has served the company and performance levels. Needless to say, we also look at every layoff plan to make sure that its impact does not unfairly affect any group of employees.

Salaried layoff plans, as developed by the Group and Division managers, are then discussed with corporate officials here in Dallas. Frankly, we devote a substantial amount of time to this review. We discuss not only why the layoff is contemplated, the business outlook and so forth, but exactly what is proposed, person by person.

Q. Don't large layoffs affect employee morale, even for the ones who remain at work?

A. Absolutely! Large layoffs are bound to have an adverse effect on employee morale. It is only human to speculate about who will be next and whether you and your friends and co-workers will be among them. But generally speaking, most employees are demonstrating a realistic understanding of the situation and are cooperative in making the necessary adjustments that layoffs create. When business drops off, it becomes extremely important for each of us to do the best job possible to keep our operation competitive in the marketplace.

Q. When do you think the business upturn will get under way?

A. Many business and government economists are forecasting that the turn-around will occur yet this year. President Reagan and the conservatives in Congress have initiated some of the boldest moves of any administration in the past 40 years. The biggest tax cut in history was passed. The rate of inflation has been dropping steadily.



Interest rates, while still high, have dropped below the 20.2 percent rate that this administration inherited. You should remember that during President Carter's term of office, the prime interest rate rose from 6.3 percent to 20.2 percent, the rate of inflation rose from 5.8 percent to 13.5 percent, and the federal budget increased by 132.6 percent. We are now paying for the excesses of those and previous years of mammoth government spending. I believe we are on the right track now to economic recovery, but it is a slow, painful process that affects many Dresser people.

Q. What industries will recover first, as you see it?

A. That's difficult to say, but the ripple effect will come into play on the upturn just as it did on the downturn. When autos start selling, the steel and metalworking industries will pick up and this will stimulate business in our operating units serving those industries. Construction and roadbuilding and repair programs have been curtailed substantially. These involve projects that must be undertaken at some point in time, and they will add momentum to the upturn.

Q. Do you feel that the recession has bottomed out?

A. Yes, I do, and I believe that over the next several months we will see many Dresser operating units which have been hurt by the recession begin their recovery toward more normal operations.

Q. What does that mean to employees who are on layoff?

A. That slowly, but certainly, the prospects of returning to work become better and better. You know, one of our most important operating goals is to provide continuity of employment for each and every employee who contributes to the success of the company.

Q. Any final comments about employees on layoff?

A. Certainly. I want employees on layoff, and their families, to know that we recognize just how serious their situation is or may become. We are more than sympathetic. We are working as hard as we can to get business back to the point that their jobs are restored.

INSTALLATION SPECIALISTS
IRON & STEEL MARKET

| Name | Hire Date | Date of Birth | Date of Layoff |
|---|---|---|---|
| E. F. Brieck | 6/7/65 | 2/8/27 | 7/2/82 |
| A. G. Malarich | 8/1/66 | 3/31/23 | 7/30/82 |
| H. J. Faust | 9/1/66 | 5/31/43 | — |
| W. E. Meixell | 1/28/80 | 7/28/23 | 7/9/82 |

INDUSTRIAL MARKET

| Name | Hire Date | Date of Birth | Date of Layoff |
|---|---|---|---|
| H. Harbacho | 3/21/63 | 6/22/25 | — |
| R. J. Crivelli | 7/7/76 | 12/25/28 | — |



## AFFIDAVIT OF EUGENE F. BRIECK IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMMONWEALTH OF PENNSYLVANIA )
) SS:
COUNTY OF ALLEGHENY )

BEFORE ME, the undersigned authority, personally appeared EUGENE F. BRIECK, who, being duly sworn according to law, deposes and says that the facts set forth below are true and correct to the best of his knowledge, information and belief:

1. The allegations of my Complaint are true and correct, to the best of my knowledge, information and belief, and are incorporated herein by reference, except with regard to the allegations of my Complaint concerning the nature of my layoff; I was informed that the layoff would be temporary, but that if I were not called back in nine months that I was to assume that the layoff was changed from being temporary to being permanent.

2. I was the only one of the four installation specialists in the Iron and Steel Marketing Group who had been sent out on international installation assignments. I was regularly sent out on international assignments, and as the sole representative of Harbison-Walker who was present at such installations, I had been entrusted by my employer with a great deal of responsibility and authority, which the employer obviously did not see fit to entrust to the other three installation specialists.

3. As of June and July, 1982, I was the most qualified of the four installation specialists to do installation specialist work, based on my substantial experience in industrial bricklaying before coming to work with Harbison-Walker, my substantial experience with Harbison-Walker, based upon laudatory comments I regularly received from co-employees and from customers, and further based upon my personal observations of the work performance of Al Malarich and Hugh Faust; for ex-

ample, Al Malarich regularly and over a period of years asked me how to perform certain of his duties, which he should have known how to do if he were qualified. Contrary to the statement made by Larry Sheatsley in his deposition that Malarich was "more versatile" and had a "broader experience base" than me (Defendant's Memorandum, page 6), just the opposite is true: I was more versatile than he was, and I had a broader experience base than he had.

4. Contrary to the statement made by Larry Sheatsley that Hugh Faust "was capable of multi-function skills which would have made him more valuable in terms of versatility and ability to perform various functions in the reduced department" (Defendant's Memorandum, page 6), just the opposite was true: Hugh Faust was a "gofer", with limited installation specialist skills, limited technical skills, and limited other skills.

5. I had substantial experience both with Harbison-Walker and with other employers prior to coming with Harbison-Walker, in doing paperwork and miscellaneous office chores; for example, while employed by Harbison-Walker, I did paperwork which consisted of installation reports, making surveys such as the survey on electric furnaces which I had been doing just prior to the July 2, 1982, layoff, making sketches and drawings, etc. Prior to coming to work with Harbison-Walker, I worked with Phoenix Mutual Life Insurance Company, National Life Insurance Company, Sears & Roebuck, and Ero & Bellas (re-upholsterers); while with the insurance companies, I had to be able to read, understand, use and explain a multitude of forms, insurance policies and contracts, and the like; while with Sears and Roebuck, and with Ero and Bellas, my job duties included the pricing and estimating of home improvements and upholstery repairs, and customer satisfaction. While with Harbison-Walker, I had some knowledge of the pricing, bidding and quotation practices of my employer, and to the extent that my knowledge of these practices was less than Hugh



Faust's, I could easily and quickly have been trained to do all the things he had to do with regard to prices, bids and quotations, things such as asking people for information, looking information up in books and catalogs, and dictating letters and the like.

6. At the time of my layoff from Harbison-Walker, I was most willing to do work for Harbison-Walker other than merely installation work, and I was able to perform a number of functions, and could easily and quickly have been trained to perform other functions; I would have been willing to do the "gofer" and other office chores assigned to Hugh Faust, but I was never given the opportunity to do such chores.

7. Had I not been laid off permanently by Harbison-Walker, i.e., if I had been laid off and then recalled like Hugh Faust, and if I were to have continued to work with Harbison-Walker until the normal retirement age of 65, I would have received much greater retirement benefits upon reaching age 65 than I am receiving today and will be receiving in the future; today, I receive only $142.96 per month, which figure is fixed and will not increase, and my age is 58; however, if I had not been laid off by Harbison-Walker, based upon increasing contributions to my retirement plan, and based upon the formula used by my employer, and based upon cost-of-living increases and merit increases that I would have received if I had continued to work with Harbison-Walker, I estimate that I would have received approximately $700.00 per month in retirement benefits from Harbison-Walker upon attaining age 65. My Social Security benefits also will be reduced considerably because of my layoff from Harbison-Walker and my not receiving my ordinary salary until age 65. Also, by being laid off permanently and not being recalled like Hugh Faust, I lost medical benefits which would have continued beyond age 65, life insurance, and dental insurance, as well as the loss of pay. I had a history of cancer, of which I have had no recurrence since 1970, but am un-

able presently to afford health insurance; this means that if cancer were to flare up again, I would not have the money to afford any medical treatment or hospitalization on my own, I would have no insurance, and I would have to rely on welfare to receive medical treatment. Also, whenever I die, I have only $10,000.00 in life insurance death benefits to leave to my wife; if I had not been laid off, death benefits would have been in the amount of at least $55,000.00.

8. Just prior to the July 2, 1982, layoff, I had talked with L. Edward F. Kelly, a financial advisor with Phoenix Mutual Life Insurance Company, regarding the possibility of my investing $600-800 per month toward the retirement of Dolores J. Brieck and me, and we had made tentative plans to invest such sum of money, but after I was laid off we were unable to make such investments, and we presently have no retirement available except for the $142.96 per month which I receive from Harbison-Walker.

9. During my employment with Harbison-Walker, I never received any verbal or written notification of any rating on a performance evaluation, no one ever reviewed with me any performance evaluation, and I doubt very deeply that the performance evaluation of "fair" or "satisfactory" allegedly given to me were in fact given to me at the times indicated, and I allege that the "fair" evaluations were not in keeping with what I was told and was led to believe about the quality of my work performance, which was at least satisfactory.

/s/ Eugene F. Brieck
EUGENE F. BRIECK

Sworn to and subscribed before me this 2nd day of Aug., 1985.

/s/ Henry T. Miklas
Notary Public



## EXCERPTS FROM THE DEPOSITION OF EUGENE F. BRIECK

(Record 113a-179a)

* * * *

[5] Q Now, could you tell me how old you are currently, Mr. Brieck?

A 57. Birth date is 2-8-27.

[6] Q Could you very briefly trace your educational background for me starting with where you went to high school?

A McKeesport Vocational High School till [sic] the 16th of March of '45, at which point I went to the service, went to boot camp. After boot camp, ended up in a hospital corp school, Bainbridge, Maryland.

Finished the tour of duty roughly the 20 of October of '46; spent a little bit of time with Bell Telephone, and, let me see, around July, I guess, a year, about 16 or 18 months—no, it was about 18 months later I left Bell and went to U.S. Steel, at which point I went to their medical school—I mean their masonry school to become a bricklayer.

Then the rest of the school was the school of hard knocks.

Q Were you—well, let's go back. The vo-tech school, did you receive a high school diploma from that?

A Yes. Yes.

Q Okay. And have you had any formal education other than your graduation from the vo-tech school? And by formal, I mean as apposed [sic] to the masonry school.

A Hospital corp school, and just tour.

[7] Q So you never attended junior college—

A No.

Q —or college?

A No.

Q Have you ever taken any engineering courses?

A No.

Q How about drafting courses?

* * * *

A No, I haven't had any.

Q Any engineering or drafting courses?

A No. No.

Q Even in McKeesport vo-tech program, they didn't have any industrial arts, drafting courses?

A They had drafting there. I took up radio. Radio repair.

Q Now, with respect to the masonry school, was that part of an apprentice program at U.S. Steel?

A Right. Theory and actual working conditions.

Q Did you attain your journeyman's card?

A Right.

Q When did you obtain your journeyman's card, I [8] take it as a bricklayer?

A Right. We had a little discussion about that a couple weeks ago, and my best guess is that around '51 —latter part of '52, rather. Latter part of '52.

Q You still keep your card—your card is still current?

A No, I don't carry a union card, no. I haven't done that in 20 years.

Q Okay. How long were you employed by U.S. Steel?

A That's what we were discussing. About four and a half years, I guess. Maybe five.

Q So that would have been roughly from, let's see, if you came out of the service in '46—

A From '48 to approximately '52.

Q Okay.

A Don't quote me on that year, but it's in that range.

* * * *

[9] Q Okay. What was the reason for leaving your employment with U.S. Steel?

A There was quite a few layoffs at the time. I had very little seniority, and I had a pretty good size contract to be a selfemployed [sic] contractor.



Q Okay.

A Which I did for about three years.

Q Did you work at any particular plant of U.S. Steel at that point, or—

A I was working out of National Tube, that's where I had originally taken my—that's in McKeesport.

A Then after that I went into the AF of L Masonry Union, and did little bit of industrial bricklaying, coke ovens and blast furnaces.

Q Was this the three years of self employment that [10] you described, or was this after?

A Well, that was sort of merged in there a little bit. It was more after than during.

Q Okay. What was the nature of the self employment, was that bricklaying, contracting?

A Bricklaying, contracting homes and buildings, drive-in theaters.

Q Okay. How long did you work as a masonry journeyman working on industrial bricklaying projects?

A I'd say a good solid six years or so. Very diversified type of training that I had. Most people would specialize in a particular furnace, I hit them all.

Q You referred to working on furnaces. I take it that that would have been pretty much restricted to the steel industry?

A Strictly.

Q Strictly steel industry?

A Uh-huh.

Q Are there any idiosyncrasies in bricklaying a steel furnace as apposed [sic] to, say a copper furnace, or something like that?

A I have never been in a copper furnace, but a fellow like myself, I know I sound like I am blowing my horn, but when you had the type of background that [11] I had as far as steelmaking furnaces, I say we were very diversified; blast furnace, coke oven, reheat furnaces, open hearths, ladles, Bessemers, the whole bit. And when you can do them, you can do anything.

So essentially, yes. With Harbison-Walker I had worked a couple kilns which I had never seen before, but I was able to do it because it's that type of work; arch work, tie and bonding, that type of thing.

Q Okay. You say you worked about six years as a bricklayer with the AFL. That brings us roughly up to about '62, '63, somewhere in there. What did you do after you worked with them?

A I worked for Sears for awhile. In fact, it was late '61, November of '61, I believe it was, I hired out with Sears as a home improvement salesman, stayed with them about a year. And that was strictly a commission job.

And while I was working there, a friend of mine asked me to sell some upholstery for him. He had an upholstery shop. I worked the two jobs together.

Q Were you still doing bricklaying during this period?

A No—oh, I was doing, but not—for friends and neighbors, that type of thing. Little fireplaces, garages, maybe a porch. I had kept active at it, but [12] not in the steel industry part of it.

Q What was the reason for—that sounds like it's a pretty drastic switch from being a bricklayer in the steel industry to a home improvement salesman and upholstery—

A What happened, back in the very late '50's and early 60's, and we say it with—I won't use the word—but anyhow, bricklayers, so called bricklayers from the south, we called them rebels, and they come up and eat us alive. We were making 60, $70 a thousand for laying up a house. They were doing the same job for maybe 35, 40. And contractors were looking for cost cutting, and just wiped us out. There was very little—

Q They were nonunion bricklayers?

A They were all nonunion, and just eat us alive. So I went from Sears to two different insurance companies.



Q You were with Sears for about a year?

A Approximately—approximate.

Q Then you joined a couple insurance companies?

A I went with National Life of Tennessee. When I realized what it was, I got out as quick as I could and went to Phoenex Mutual. And from there I went [13] into Harbison-Walker.

* * * *

Q Okay. Then you went to the Phoenex Mutual. Was that a different type of company?

A That's a whole life company. That's the big outfit.

Q How long did you stay as an insurance salesman with Phoenex Mutual?

A Maybe six months. That's when I realized I didn't have enough formal education to qualify myself in that type of a company. That, and it was very difficult knocking on doors cold turkey.

Q Now, when did you join Harbison-Walker?

A June 7, 1965.

Q And what position did you start in for Harbison? [14] A I don't know what the title was, but when Dresser took over in '68, they referred to us as installation specialists. I still had the same job, it was just different title name. I don't recall.

Q Okay.

A Just a serviceman, I guess.

* * * *

Q When you joined Harbison-Walker in '65, what were your day to day duties? You said there wasn't much change in the duties when Dresser took over.

A Basically, they had an installation, they needed the skill of a mason familiar with the art of [15] industrial bricklaying. I went to the plants, and at first they were mostly all new installations. I had to show the customers' people the technique that is required to lay up a job properly, to give them maximum life. And to also

troubleshoot after the linings are in and the furnace is on-line.

I would go to the plant while they are working the furnaces, and help them where I could in regards to what they might be doing wrong, or what they can do to help themself as far as slagging the bottoms up, and doing protective maintenance to prolong the life of the lining, and to take wear diagrams of the furnace after it's been torn down, come off-line, and to read the lining to show them the different qualities of brick that would give it a perscription [sic] type lining to equalize the wear. The secret was to try to wear the lining from top to bottom equally, all the way through.

Q Would you be involved in supervising the installation, or would you just be onsite to answer any questions that came up?

A Both. Both. In some jobs, on brand new installations, I would actually do—I would supervise the—I would instruct the foremen what brick are needed, let him know how they were to be [16] installed, and go into the furnace and actually watch this take place, make any corrections where necessary. A lot of it was just hand holding, it was on calls that were PR type of things.

Q Was there any changes over the course of the 17 years that you worked at Harbison-Walker in what you did?

A About the only change was about that of responsibilities, that's all.

Q What do you mean by that?

A When I initially went out, I went out with people. After I was there awhile, people went out with me.

Q Okay. So in terms of—

A In a lot of cases, most times I worked solo, knowing how to read a print, sketch them. Before Dresser took over, I would make sketches, I would do—make counts, furnace counts.

Q What's a furnace count?

A How many brick went into a lining.



Q Okay.

A Try to design a furnace that would wear equally to give them prolonged life.

Q When you say try to design, what do you mean? You didn't actually do design work on the [17] furnace, did you?

A Not the shell. The masonry portion it it. Lot of people are not aware that in a particular furnace there is not a single quality of brick, there is many qualities, because there is wear spots. Of course, we put our premium in the wear spots, and put our lower price brick in spots that doesn't take that type of wear, try to balance it out. Wear pads, we called them.

Q Now, would Dresser or Harbison-Walker, would they be paid by the customer for your time, or did they bill on an hourly basis? How did that work?

A The way I understand it, international jobs, the customer would pay for my time. Domestic jobs, it was in the cost of the brick.

A lot of these new installations were done by contractors, and I would oversee the contractors. I acted as a liaison between the contractor and the customer.

Q Okay. These were situations where the contractor would be the person who had the contract for actually installing the brick?

A Right. And they had to put it into our instructions.

Q Okay. Who were your supervisors, let's see, say [18] during the last ten years of your employment at Dresser?

A Ken Hanson, Bill Hekaras. . . . And Larry Sheatsley. Of course they were the head of the department. I, in, turn worked with, many years with—I reported to a fellow by the name Carl Willenbrock. . . . And after Dresser took over, he got transferred to Colorado, and a fellow by the name of Chuck Wenrich came in, and I reported to him. He was responsible for my jobs, and where I would go.

Then, I don't remember just when, but I guess the last couple of years or so, he more or less gave that up and Don Jamison took that over, under Larry Sheatsley.

Q How would you get your assignments?

A Through these three people. Carl Willenbrock, Chuck Wenrich and Don Jamison.

Q What would you do on a day to day basis? I take it you would get a call—

A The last four years of my employment I worked out of my home. I never reported to the office, [19] except to turn in sales reports, expense accounts.

Q Okay. Prior to that, how did it work?

A I was mostly on the road. When Dresser took over, they told us that they didn't want any of us people—by "us people," I mean the people without the college degree—doing any paper work, except for our reports, installation reports.

Q What do you mean by paper work?

A Surveys, sketches, things of this nature; laying out furnaces.

Q Are these things that you had done before?

A Always. I was very much involved in paper work and the day to day operations of the office.

Q And that was during the first three years, I take it, of your employment?

A Yes.

Q Okay.

A That was the most enjoyable three years. Because I was one of them kind of guys, I just couldn't wait until I got to work, and a lot of times I would take a short lunch hour and stay right up to the hour before I left.

I had a hell of a boss, that Carl Willenbrock. He believed in me, and he trusted me, and he gave me a lot of authority—not authority, but responsibility. [20] Then when Dresser took over, it was a completely different format. We had what we called sales, and they went into what they called marketing, which is a gourmet way of saying sales, I guess.



Q Now, you mentioned three things when I asked you what paper work constituted, you said surveys, sketches and layout of furnaces. What do you mean by surveys? What does that include?

A Like, Ford Motor, they had a BOF shop. They were having problems. They weren't getting the lining like they thought they should. So what we got from them was a series of heat records. We'll say they had 250 heats on a lining before it come off-line. In every heat they made, it had a chemistry to it; how much sulphur, carbon, how much flux added, how many reblows, how often were the reblows until the heat was tapped, tap times. They had all this information listed on each heat.

And what I did, I guess there were 21 or 22 of them at the time, 22 linings I did a survey on. I took and I broke it all down, and I was able to give them the averages of what their chemistry was of the heats, their reblows, how often they reblew, the length of their heat, the amount of tonnage per heat averages, and it was quite a comprehensive thing, and [21] gave them an idea of what they were doing wrong.

Q And that's what you mean by a survey, just trying to trouble shoot or figure out what the problem is?

A That was one type. And just before I got laid off, I was doing a survey for electric furnaces. We had a list of all the electric furnaces in the country. What we had to do, find out—this was for marketing purposes—to find out what brick went into what furnace, and what percentages, so they knew how to set up their manufacturing schedule so they wouldn't be overstocked. I never did get to finish it.

Q Okay. So you were continuing to do things like surveys even after Dresser took over?

A Well, they called us back into the office in February of '82, and Dresser said that these people, meaning myself and another guy, were not earning their keep, because there wasn't enough roadwork. So bring them in the office and give them something to do. And that is what one of my jobs were.

Q Who was the other guy they mentioned?

A Al Malarich, that's M-a-l-a-r-i-c-h.

Q Now, you said that for the last four years of your employment, you worked out of your home. What [22] would—

A Except for the last four months before I got laid off.

Q After this February of '82 meeting. Prior to that, what would you do? Prior to this four year period where you worked out of your home, what would you do when you didn't have an installation project to be going to?

A You are not going to believe this, but I sat in that office and read magazines and books. That was all they would let us do. That was very demoralizing. Very. When the rest of the company come down, say, "Hey, what you got here, a good book?" and never raise hell with you, you knew it was bad. But they just did not want our people, or Al and I, Joe Scott, Rudy, to do any kind of paper work.

Q How much time was—

A Eight years I did that.

* * * *

[23] But my question was going to be how much time out of a typical week would you be spending in the office reading magazines and books?

A Oh, it would be—there would be periods I wouldn't be in that office for three or four weeks at a time. And when I would be, generally, two days at a time. They kept us pretty busy on the road. After we made our sales reports out, then nothing else to do.

Q Sales reports, you mean installation reports?

A Right. They called them sales, installation reports.

Q Okay. You mentioned that you and Al Malarich were among the employees who were not permitted to do anything other than these activities, and you also mentioned Joe Scott and Rudy?

A Yes, Joe Scott retired, and Rudy was killed.



Q What's Rudy's last name?

A Cubakovic, C-u-b-a-k-o-v-i-c.

Q These were both installation specialists?

A There were four of us.

Q When was Rudy killed?

A I could tell you it was a Wednesday. That's about as much as I could remember exactly. But I will [24] say nine years ago.

Q And Joe Scott, when did he retire, approximately?

A About three years before I left. I would say '79.

Q Do you have any idea how old Rudy Cubakovic was at the time?

A At the time, I think he was 57 or 58.

* * * *

Q Now, what was the reason, or was any reason given for this change as far as your work—you are reading these magazines in the office, and then I take it you were told you didn't have to come to the office when you didn't have an installation project?

A Well, after eight years of this doing nothing in the office except for our sales reports, they decided that we were getting to be a pain.

What we were doing before was, we decided that [25] we were going to have some fun, so we just went and bothered the other guys deliberately. The boss got mad. Because the other department was doing it for years. Their people were working out of their home, and we felt we were entitled to the same thing.

So we just pestered him enough till [sic] Ken Hanson says, "Okay you win. As of today, you are working out of your home."

So I got myself a telephone answering system to keep in touch. And in all that time, in four years, they never waited more than 15 minutes to get ahold of me.

* * * *

[27] Q Now, during the period, the four year period that you were working out of your home, I take it you

would be called by Jamison, or whomever was your supervisor, and be told, "We have an installation," or whatever, "go to this job or that job"?

A Right.

Q Okay. And so during periods that you did not have an installation project to be present at work, what did you do?

A Stay at home.

Q Okay.

A It was my thought that they felt that I had enough talent that they could trust me to do it.

Q Was your compensation at all tied to the number of installations that you went to, or anything like that?

A Not to my knowledge, no.

Q You received a monthly salary, I take it?

[28] A Right. Monthly salary, and quite a few—every year, a merit raise. Some were not as heavy as others, but the last four or five years we were getting cost of living raises.

Q But that monthly salary would never be reduced if you just happened to—

A Never. Never.

Q —not have any installations for an extended period?

A No. No.

Q Okay.

A Always stable.

Q Okay. Did you notice any decline in the number of installation projects that you were being called for, let's say from 1980 forward?

A From when?

Q Let's say 1980 forward, to the time of your retirement.

A 1980, things were getting a little bit slow, but not bad. They kept us busy. It wasn't until '82 that things started dropping off a little bit. And that's when they asked us to come into the office, in February.

Q Okay. Now, who were the other installation specialists, other than these three that you have [29] identified as being in the non ferris? Group, who were the other installation specialists working, let's say in 1980, in your group?



A Just the four of us. There was Al Malarich, myself and Joe Scott, and Rudy was already dead. Just three of us.

Q Okay. And Joe Scott you say retired shortly before you were laid off?

A He retired, if my memory serves me collectly [sic], in '79.

Q Oh, okay, I am sorry. Was he replaced by anyone?

A No. Just made the work a little bit tougher, that's all. Not tougher, but kept us busier. We took up the slack.

Q How about Mr. Meixell, what was he?

A I really didn't have the a chance to spend too much time with Mike. If I remember correctly, he may have come in—in fact, he did come in as an installation man. But he worked when I was home. He stayed in the office.

Q You don't know whether he was also classified as an installation specialist?

A He was.

Q He was? Did he replace Scott, then? When did [30] he come on board, roughly?

A He was only there about, maybe a year and a half or so. Possibly two years.

Q What was his background?

A He was a mason supervisor for Phoenix Steam out in the eastern part of the state.

Q And do you know whether he did the same type of—at least to some extent, he did the same type of installation?

A Right.

Q Supervision and—

A Right.

Q Okay. But he did not work out of his home, he worked in the office?

A He worked out of the office.

Q Do you have any idea what kind of things he would do when he was in the office, not on an installation project?

A Like I said, I was at home. I really had no idea what he was doing. Not too much of anything, but he tried to keep himself busy.

Q Okay. So the fact that you were at home means that you don't have any knowledge of what he would do when he was in the office?

A No. I have a rough idea, but I couldn't say it [31] was so.

Q You are just assuming?

A Yes.

Q Okay. How about Mr. Faust, was he—

A [Hugh] Faust?

Q Yes. Was he classified—

A He mostly was an office boy. He was originally a correspondent, and he came from the correspondent's office over to our office as a correspondent. I don't know whether that was his title, but he kept in touch with the rental cars, and did other odds and ends of that sort. Nothing technical.

Then towards the end, he would go on a few installation jobs here and there with somebody. He was more or less trying to break him in as a trainee type of thing.

* * * *

[32] Q So as far as what Mr. Faust did on a day to day basis, let's say during the four years prior to your layoff, again, you don't really know because you weren't around the offers [sic] during that period?

A The best I would say, and it sounds demeaning, and I apologize if it does, but he was more like a gopher [sic].

Q Okay.

A You know, the odd man out, so to speak. If there was an installation, he didn't have nothing to do, he



would go out and sub for them. He never went on a job, to my knowledge, by himself. He was always with somebody.

Q Okay.

A He had no background or training in this particular type of field.

Q When you say he came over from the correspondent's office, what do you mean by correspondent?

A Correspondents, the people that make up a price list of a particular job. If a salesman come in, he said he had an order for such and such, or a bid, he [33] made up bid prices on jobs.

Q Okay.

A He would come over to us and get the amounts, and he would price up the brick.

Q Would he correspond with vendors and thinks like that?

A More or less, yes.

Q Anything else that you're aware of that he did?

A Well, customer called up and said, "Hey, I got a ladle, how much do you want for it? Do you know how much it is going to cost me?"

They wouldn't necessarily call him, although occasionally they may have. But for the most part they called one of our people or the salespeople, and we gave him the information that he needed X number of brick, so many of these, so many of those, different qualities.

"What's the ladles going to cost me?" He would figure out the price.

"How much is 20 ladles going to cost?" And then management would look at it and possibly give him a price off of that.

Q How about sketches or specifications?

A Nothing of that sort. He could look up specifications, but he wouldn't be able to make them. [34] He did that in correspondent's work, specifications.

Q He didn't do any drawings or sketches?

A No.

Q Who would do the surveys and the sketches and the layouts of furnaces, then?

A Mostly engineering, although we did a few ourself. What we would do is give engineering the measurements of a particular shell for an open hearth, or a BOF, or whatever the case may be, electric furnace, and tell them what brick go where.

Then they would send down to engineering, they would figure out the counts. The counts would go to a fellow like the correspondents, and he would price it.

Q Now, you referred to a meeting that occurred in February of '82, when they told you they wanted you to come back into the office. Who was present during that meeting?

A I know Larry [Sheatsley] was there. He is the guy that called me in. I think he was the only one. Don may have been there, stepped in and out. They told me the purpose of the meeting was because Dresser was complaining that we didn't have enough work to keep us—to warrant our income, and bring us in the office, give us something to do.

Q I take it business was down at that point, so [35] you weren't—

A Yes. But it wasn't drastic at that point. And it was at this meeting that I asked them, "What's the chance of me getting laid off?" And that's when he told me, "You won't have nothing to worry about." He also made the statement two years before on my 15th anniversary

* * * *

Q And who else was present? Was Malarich there in this meeting as well?

A No, it was just me.

Q Had a similar meeting occurred with Malarich, to your knowledge?

A I guess it did. It's only conjecture on my part, but I am sure he had the same thing.



Q Because he started going into the office at that point as well?

A Yes, he started then, too.

Q Had you heard rumors of a layoff, or anything like that?

A Well, I knew they were laying the office work off, mail carriers and few correspondents, and in the districts they were laying a few off here and there, but nothing heavy. One of the plants had shut down, [36] but then it had been shut down, off and on, for ten years. That was because of compitition [sic], not because of slow downs, labor problems.

Q So were you getting word at that point that you might be laid off?

A It come to thought, because I had been laid off in '72. And I felt that was very unjustified at the time. I had just had a pretty good bout of cancer, and while I can't proof [sic] anything, I felt that was one of the reasons—I was having mental problems with it. At that time they laid me off when things got a little bit tight.

Q How long had you been laid off on that occasion?

A September 16 to the 9th of January the following year.

Q So, about three months?

A Closer to four.

Q Had anybody else been laid off during that period?

A Four of us.

Q All of the installation specialists?

A No. . . .

* * * *

[37] Q Okay. Were there any installation specialists retained in that layoff?

A All but me. And it was at that time they had a young fellow there that had six months service, and they kept him and let me go for awhile.

* * * *

Q And he was an installation specialist?

A No, he was a product specialist, but he did installation work. It was just a different title, that's all.

Q Well, who were the other installation specialists that were retained [in 1972]?

A Al Malarich, Rudy Cubakovic, Joe Scott, and I got laid off.

* * * *

[38] Q So as of February of '82 you were concerned that—I take it you weren't really concerned by that point?

A The wife to be was. . . .

* * * *

Then Larry told me that I didn't have anything to worry about. Then there was this letter, newsletter from this here personnel director out of Dallas, made a statement to the effect that—I interpreted it meaning me, while it wasn't by name, by position—they were going to hold on to people with experience and time, and other considerations. And she was feeling a little bit better, but she wasn't convinced.

Then it was right after that that I got a letter [39] from my boss giving me a $1,000 raise, $4 short of a thousand, thanking me for my excellent efforts and the good job I was doing, and so on and so forth. When I showed her that, "You don't think they are going to get rid of you. They don't give a $1,000 raise to somebody they are going to layoff."

So I was scheduled to go to Turkey, and she says, "Let's get married after you come back from Turkey," because it was just one of them kind of deals that international jobs, you are never sure when they are going to be taking place. So they just kept putting off—we didn't keep putting off, but the customer.

So finally I got the call to Turkey, and we, in the meantime, had made plans and got our license and everything. We were pretty sure when the date was when I



was leaving. So when I came back from Turkey, it was on a Thursday, we got married on a Friday.

Following Monday, after a week's vacation—we took a week's vacation, and the following Monday went back to work, I went to Erie to do a job. Come back Wednesday night, went to work Thursday morning. Larry wanted to say something to me, and he was a little flushed in the face. And he says, "I will catch you later."

[40] So I sensed something was coming off. So I asked Don Jamison early in the afternoon, I said, "Don, what's happened?" I said, "Layoff is going to be that bad?"

That month they had quite a bit of layoff in our department—not our department, but our office. And when I come back, I said, "Don," I said, "how bad is it?"

He says, "It's real bad." He walked away from me, he didn't want to tell me because he knew. And 20 after 4:00 he called me in, and 4:30 I was gone.

Q Going back to February of '82, you said you weren't real concerned, but your wife to be was. Had you started looking for another job by that point?

A No.

Q Okay.

A I had no reason to, because I was assured that this wasn't going to happen.

* * * *

[41] Q Are you aware of any potential openings in other companies, or did you become aware at that point, let's say February of '82, up to the time of your layoff?

A At that point, being on the road as much as I had, I talked to competitors, installation people, and they were all fearful for the same thing I was. All of the refractory companies were laying off, all of them.

Q So the answer is no, you weren't aware of any openings that came up during that—

A No. No.

Q —February of '82 through July of '82 period?

* * * *

[42] Q Now, when you started working in the office again after February of '82, you said one of the things you were assigned to do was a survey for electric furnaces.

A Uh-huh.

Q Was there anything else that you worked on during that period?

A That was a pretty comprehensive job, I mean, took a lot of searching. I had to go through all the files, and engineering, find out what type of furnaces [43] they had, make of them, the size of them, whatever.

Q Okay.

A Then there is not just a couple, there is several, 2, 300 electric furnace shops in this country. Some of them are just tiny little things. Some are only, like 1200 pound furnaces, some are 400 ton furnaces.

Q So that was the sole project you worked on up until the time—

A That, and my reports.

Q Now, I take it that business continued to decline during 1982 in terms—at least measured by the number of installation jobs you were working on?

A Right. Right.

Q Okay. Did you hear any rumors about possibility of layoffs among installation specialists?

A Never. Never got a hint. That's what threw me off. There was never a hint.

Q Okay. Now, you referred to a letter that you received at the time that you received a $1,000 compensation increase. When did you receive that letter?

A May. It was late in May, but it told me that I had gotten the raise for the 1st of May, but he didn't let me know until later in the month, because it [44] wouldn't have been—I wouldn't have seen it in my paycheck until the first pay.

Q You knew you were getting a raise, but you didn't know what the amount was until—

A He told me, $83, which comes to $996. I had called it a $1,000 raise.



Q Okay. By he, are you referring again to Mr. Sheatsley?

A Don Jamison.

Q Okay, Don Jamison.

A And that was catalystic, caused my wife to say "I do." Then 13 days later, they lowered the boom.

Q Had you ever received a letter like this with your merit increase in the past?

A I am sorry, I didn't quite hear.

Q Had you ever received a letter from Mr. Sheatsley or Mr. Jamison on past occasions when you were given merit increases?

A No, I got phone calls telling me, but never a letter.

Q Okay. And what was said in this letter, again, by Mr. Jamison?

A I can't repeat it verbatim, but, "Dear Gene, in case I forget to tell you, there has been an $83 increase in your pay. This is reward to thank you for [45] your excellent efforts"—"for your fine work and excellent efforts."

Then he goes on to tell me about a job that I had to do at Bayou Steel, and mentioned the Turkey job to me, that will be coming up soon. Then he signed it off, "Thank you for your excellent efforts," or, "fine work."

Q Do you still have a copy of that letter anywhere?

A I have the original. Letters like that I don't—comments like that I don't let go by.

Q Now, back in the February meeting, you said that you specifically asked Mr. Sheatsley whether you were going to be laid off; is that right?

A Right.

Q What was his response?

A "You don't have anything to worry about." He said the same thing in 1980, August of '80. He said, "Don't worry about it."

Q What was the occasion of this conversation in August of 1980?

A My 15th anniversary. I was called in, like two, three weeks before. He said, "First chance you get,

come in." He said, "We would like to take you to lunch." [46] So Larry and Don Jamison, I called them and asked them if such and such a date would be all right, I am guessing now, but somewhere in the middle of August, we'll call it the 15th. So I come in, and at lunch time we went over—I don't even know the name of the place, right next to Hornes, there, fancy place—and we got to talk about one thing and another.

I says, "By the way," I says, "things look like they are going to get a little bit tight in the industry." I says, "What's the chance of me getting laid off?"

He said that, he says, "Not enough to even talk about it. Don't worry about it."

I said, "Well, I was laid off in '72, and," I says, "I wasn't warned then. And I thought it was little politics played then."

Larry says, "I don't want it to happen again." He says that, "Don't worry about it."

Q That was Mr. Sheatsley again?

A Uh-huh.

Q And this conversation occurred in Mr. Jamison's presence?

A Yes. The three of us.

Q What had caused you to be concerned at that [47] point? I thought business didn't start to slack off until '82.

A Well, Youngstown Sheet and Tube went down in Youngstown, Ohio, segments of different plants that you don't see in the newspaper, because I was going through all these places, and we were privy to a lot of this information that the general public wasn't.

And Gary shut down a little piece of their's, and somebody else shut a little piece of their's down, and different places. Well, it still looked like it was going strong. You could see the writing on the wall. And Carter was doing a pretty good job of killing things off then.

Well, I just had a feeling something was going to happen in another two or three years, because I called this shot 10, 12 years ago, I saw it happening. I could see



what was happening in these mills. They weren't putting any money into them except for new melt facilities.

You could read in the Wall Street Journal. Machine tool manufacturers, they just weren't producing like they were. They were having hard times. And it takes a while from the time they started getting hit until we started getting hit, because this machinery ages, it's not being replaced, [48] something is going to happen.

And the mills were getting old, and they weren't putting any money into them, they were bleeding them. And it's just little prudence on my part, I felt, that caused me to believe that it wasn't going to be good. That's why I was concerned about it. At the time I wasn't worried about getting laid off then.

Q Okay.

A That was back in '80.

Q You weren't worried about getting laid off?

A No. No. Not at all. But I sensed something was happening, because I could see what was happening at these different steel mills. They shut blast furnace down in U.S. Steel, then Youngstown Sheet and Tube went down, closing up some mills. It always has an indirect effect on us, eventually. It was directly.

Q During the period subsequent to this conversation in which Mr. Sheatsley said you didn't have to worry about anything, that's the August of '80 conversation, up until the time of your layoff, did you start looking for another job at any point?

A I had no reason to.

Q Okay. And again, did you come to know of any openings in the industry that you might have been [49] interested in, but passed up?

A There again, talking with our competitors, we were friends but competitors, I mean installation people, and they were telling us that one of their very younger people were laid off, or they are not hiring anymore, or things were starting to look bleak. . . .

And couple companies were on the verge of folding. . . .

• • • •

[50] Q Let's go up to the point when you were advised of your layoff. Could you tell me again what day that occurred, and exactly what the conversations occurred on that day were?

A Starting in the morning?

Q Yes.

A When I come in, we had just moved our offices. Our offices where I was then located had been remodeled. And I had just come off a job. I hadn't been in the office at all. I was on several different jobs, actually, and I hadn't seen the new offices much.

When I come upstairs they said, "This will be your desk here," (indicating). And I went to see Larry. And he says, "Hey, I understand you did a real good job over at Turkey." [51] And I says, "Thank you."

And he said, "By the way," he said, "I would like to talk to you about something." And he got real flushed in the face. And he said, "Awe, never mind, we'll talk about it this afternoon."

I said, "Okay." Then he walked away from me.

So I went ahead and did all my installation reports for Turkey, and this job up in Erie, made out my international expense account. And I do believe the domestic expense account was due, so I made that one out. They kept me busy, pretty much, during the day.

So 20 after 4:00 the secretary come over and says that, "Larry wants too [sic] see you." I just had a feeling. I didn't know what, but I had a feeling.

So I walked in. He says, "Gene," he says, "I got bad news for you."

I says, "How bad?"

He says, "Very bad."

I says, "How bad is very bad?"

He says, "We got to lay you off."

I just plopped down in the chair. I was just—almost speechless. And I says, "How many?"

He says, "Just you."



I said, "Just me? You are picking me out [52] first?"

He says, "Yes."

I says, "Why me?"

He says, "We got to start somewhere."

I says, "Larry," I says, "I didn't think this was going to happen to me." I says, "I can't believe you did this, because you said it wasn't going happen to me."

And he said, "Well, I can't say that I wasn't completely not to blame." He said, "I had a little bit to do with it."

I just—I don't know what I was doing. Just trying to hold my breath, keep from screaming or something. I just sat there. Then he goes about and tells me that in the event that I am laid off for more than nine months, and I get hired back, I would be hired back as a new man.

He says, "But when we let you go," he says, "we're going to give you two weeks pay." I guess that's their two weeks notice, plus whatever vacation pay you have coming, which I had three weeks. And I asked him about Al Malarich, I said, "Why Al Malarich and not me?"

He says, "Well, Malarich is a better man than you." [53] I said, "Oh? That's a joke," and there was a little politics played. And, "Hey, I got more time than Al."

He says, "You do?" I had absolutely, about 15 months. So he looks through the roster and he says, "Oh, you do, too."

And I didn't have anything more to say. Finally he says, "Do you have anything else to say?"

I looked at him, and I tell you, I was never so humiliated in my life, but I wasn't going to let him get away with it. We had a fund in the office that when somebody died we sent them flowers, when somebody got married they take a collection and give them a gift. And I didn't want to ask for it, but I felt I had it coming to me, because I paid my five bucks every time some-

body got married, and I kept the office fund going. Not myself, of course, but I put my share in there.

And I says, "I got one question to ask you." I says, "I am very, very embarrassed, and I don't want to ask you, but I am going to have to ask you anyhow." I says, "I put in many a five dollar bill for wedding gifts, but," I says, "I don't see any here for me."

And he looked at Don, Don looked at him, and he says, "Oh, we have one here for you," he says, "forgot [54] to give it to you." He said, "It's out there on the coat rack," which is like a tree stand. "In fact," he says, "I even put into it and signed a card myself."

I had only been married 13 days at this point. I says, "Do you know what this is going to do to me?" He didn't answer me, just looked at me. I said, "You just buried me." I says, "Nobody will hire me."

He says, "Why?"

"Who wants anybody my age with a history of cancer?" And he just looked at me, didn't say nothing.

So I got up to leave, and he says, "Don't forget your gift." He didn't even have the courtesy to get up and hand it to me. I had to go get it, pick it up myself and walk out of that office. I was so upset, I couldn't even cry. I was completely demoralized. I almost needed physical help to help me out of there, I felt so weak.

Q Was Jamison, you said—

A He was present. But he didn't say nothing.

Q But he was present during the entire conversation, and you had seen him earlier and asked him how the layoffs were?

A I just asked him, "How is it?" He knew what I meant.

[55] He says, "Real bad."

I says, "That bad?"

He says, "Real bad." Then he had a little—just slightly flushed. He turned around and walked away from me. He said, "Don't look good," that's what it was. He said, "Don't look good at all."



For the record, it was a very unconscionable act.

Q Now, how long had this little conversation with Jamison, how long prior to the meeting had it occurred?

A Half a minute, if that long.

Q Oh, okay. So you were walking with him together into Sheatsley's office?

A No. No. This happened somewhere in the neighborhood of right after lunch. He was in his own office, and I just happened to walk in. I said, "Don, how bad are things?"

He says, "Real bad," and he got up and walked out. And that was the last of it. Wasn't even 15 seconds, then, when the secretary called me in, 20 after 4:00, Don was already sitting there with Larry.

Q And the only person that you asked about as far as why you were being laid off instead of this person, was Malarich?

[56] A Yes, that's the only one. Then I asked him about these young kids. I said, "What about all these young kids?" And he just wouldn't say nothing. He just sort of shrugged his shoulders.

Q So you did talk about other employees?

A I didn't name names. Al Malarich is the only one I named by name. The other ones were just, generally speaking of the younger kids.

Q And who were you referring to there?

A Oh, there was a dozen of them with less than maybe a year's service, if that much. I says, "I got more time than anybody in this office except for the supervisors and the product managers." There was only, like seven, eight guys ahead of me in time. I tell you, it hurt. Oh, did that hurt.

If I got laid off fifth or six or seventh, it wouldn't bother me as much as getting knocked off first.

Q Do you recall whether Malarich was in the office that day?

A I don't think he was. In fact—I would say no.

Q Was he on a job somewhere or what?

A He evidently was.

In fact he wasn't in the office that day, [57] because I was there all day and I didn't talk to him. See, here's what bothered me about Al Malarich. I have nothing against the man, no animosities whatsoever. But Al, when he come over to us from Homested Works, he was strictly open hearth. That's all he did. And throughout the course of our tenure together with Harbison-Walker, he come up to me many times, "Gene, how do you do this, how do you do that?" He went on jobs with me. I didn't go out on them with him.

He looked to me for guidence [sic]. He wanted to know about blast furnaces and all the rest. He had never done an international job. I have done a dozens of them. And, you know, you have to have some kind of something going for you to get international work. And they just don't send anybody over there; somebody they can trust and is responsible.

And I didn't go one time to one place, I went several times to several places, and it was a nice feeling to know that they trusted me to do these jobs, but they never, ever sent Al. Never. And to my knowledge, he asked for jobs. They were past work, but nobody used him.

He also made a senior installation specialist, and I wasn't, which was politics, or whatever other [58] word you want to use.

Q Now, he was older than you, was he not?

A Roughly a year and a half, maybe two.

Q Okay.

A But not in seniority.

Q Right. I understand that.

A And his economic situation wasn't nearly as bad as mine. His wife worked as a full time nurse. My wife wasn't working at all. According to this newsletter, they took these types of things into consideration. Most of these kids had wives, these young kids, newly married, both of them were working, and a layoff wouldn't have



hurt them near as much as me. They had 35 years to make up for what they lost. I didn't have nothing left.

Q Now, did you have any conversations with anyone from Dresser concerning your layoff, up until the point when you filed a charge with the Pennsylvania Human Relations Commission?

A I called the day I got laid off. Let's see, that was Thursday. Friday I called Don Stock, president of Harbison-Walker. He wasn't available. I went up to my camp site, and step daughter got a phone call sometime Sunday afternoon, says that "Don Stock called you." [59] I said, "Oh, thank God, I will get back on the job." So I called Monday morning. I says, "Don," I says, "what's happening here?"

A He says, "Well, we had to make a bunch of layoffs."

I says, "Is there anything you can do for me?"

He says, "No, Gene, I can't. I cannot interfere with the process."

I says" [sic], "You mean, that is it? You can't help me at all?" I says, "You are keeping all these kids, and your [sic] neglecting me."

Q And what did he say to that?

A He says, "I can't interfere with the process." He says, "I am sorry. Goodby [sic]." And that was it. And that's the last I talked to anybody from Harbison-Walker.

Q And then you filed a charge subsequently with the Human Relations Commission?

A Right. And at that meeting, I asked [Nicolella], "John," I says, "Why are you keeping these kids and getting rid of me?"

He says, "Gene, these kids are going to be our future managers." And that's all he said.

Q At what meeting was this?

A At the Human Relations.

[60] Q Down at the Commission office?

A Uh-huh. . . . And it was also brought up at that Human Relations meeting that Mr. Tort—I believe that's his name, don't quote me on it—asked them if they have any problems with me as far as discipline, and so on and so forth—no, he asked me, and I says, "Never, except for one. There was a misunderstanding," I said, "that happened just very recently." And I explained to him what it was, and John [Nicolella] had that information right in front of him.

He says, "Yes, it was a lack of communication." But I had never been reprimanded, I have never been suspended, I have never had a pay raise held back on me. . . . I had never had a pay raise held back, I have never been reprimanded, and I have never been given a suspension, I have never had a bauling [sic] out behind a closed doors, and in 17 years, I think that is a [61] pretty good record.

I have always done what I was ever told to do, never turned a job down, I was always available for any job any time of the day or night, and a lot of them job calls are on weekends, and I was always available.

I have never been called in for questions on my expense account. In, fact I did get called in, but not to discipline me, but to tell me that I did a real good job on the expense account. He says, "I wish everybody could do them like this," not because it was neat or anything, but it was decent and honest, and you have to be a mind reader to see if an expense account is loaded up or not. I never had any kind of problems. I guard that money as if it was my own.

* * * *

[62] Q Why don't we just start with, you have had an opportunity to review the document. Do you recall that this is a copy of the charge that you filed with the Commission?

A I do.

* * * *



[64] Q Okay. In paragraph C-1 you allege that "The Respondent retained younger, less senior, less experienced persons under the pretext that they were more deversified [sic] than me."

First of all, with respected [sic] to the last part of that allegation, where did you derive this idea that the pretext was that the people retained were more deversified [sic]? Was that something Mr. Sheatsley had told you?

A He didn't say it in them words, but he implied it as much as that they had more on the ball than I did, because they had a college degree, chemistry, metalurgy, industrial engineering type degrees, and I didn't. And that, as they mentioned in the Human Relations meetings, says that they are going to be our future managers.

Q Okay. So this was referring not to Mr. Malarich—

A No. No.

Q —but to these, you have referred to them as young kids?

A Right. Right.

Q Were any of those people installation specialists?

A No.

* * * *

(65] They did mostly office work, although they went out on occasion. Now, some of these kids I took out on the jobs with me, training them.

Q Okay. And you do recall Mr. Sheatsley, when you asked why they were retained, saying that because, among other things, they had college degrees?

A No, he didn't say that.

Q What did we say?

[66] A He just shrugged his shoulders. I told you that before. And I says, "Why me and not them?"

"We had to start somewhere," that was his answer.

* * * *

Q I am trying to find out what exactly he did say, because apparently he said something that caused you put this in your PHRC complaint.

A Okay.

He implied that they can do more than I can, that they have a degree, that they had more background than I had to do the job.

But I says, "Yes, but they are not bricklayers, and they don't know the physical characteristics of these furnaces as well as I do." I says, "They don't"—I do remember now. Okay.

I told him, I said, "They don't even know how to handle people. They have been thrown out of [67] plants"—not these particular boys, but in the past, young people go in there and start telling customers how to do things.

And I says, "You just don't do that to customers." And I says, "I have never been thrown out of a plant before because of poor workmanship or personality, or any other reason."

He says, "Can you do what they do?["]

I says, "No more than they can do what I do. I can do some of their work, but not all of it." For me to break down the chemistry of a brick, I can't. But then this is a very deversified [sic] office. Everybody is supposed to be helping another. That's why they have all the different engineering type degrees.

I guess you could say no man is an island unto himself.

* * * *

[68] Q Was the subject that these people had college degrees, did Sheatsley mention that at all?

A It was implied.

Q Well, that doesn't tell me. I can't go on what was implied. What did he say that implied that?

A They had more background.

Q Okay.

A They got schooling, or education.



Q Okay. These are things—

A He didn't mention the word degree. He knows that's a sore spot with me.

Q Okay. So he said they had more background?

A Formal training, or schooling.

Q Anything else that he said that led you to conclude that he was implying that it was their degrees, and that they were more deversified [sic]?

A I don't think so.

Q Now, is it true that all of these people that you're referring to as the younger, less senior, less experienced personss [sic] who were retained, they were all product—

A Specialists.

[69] —specialists; is that the title that they had?

A Don't quote me on it, but I think that's what they are called.

Q Product specialists, or product analyst, something like that?

A I don't think it's analyst. I think it's specialist.

* * * *

Q What does a product specialist do?

A Does the surveys that I spoke of before, all different type of surveys. I really never got into it that that much, because I was only—when I got called back in February, I still wasn't in the office that much. And when I was, I was doing my own work.

These kids, they had their degree and they felt they were so much better than anybody else, they didn't socialize with me at all. And it was "Good morning," "Good afternoon," "Good night," that was about it.

So for me to actually know what they got into, I can't say. I do know they were making—working on surveys, and they had the big computer readout sheets, and picking information off that.

Q Had you had any background working with [70] computers up to the point when you were laid off?

A No. In fact, there was only one man in the office that did.

Q Who was that?

A John—his name was right before mine on the roster. . . . Borfner. . . . And as far as the main computer in the main terminal, none of our people touched that.

Q Although they did work from reports from that computer?

A Oh, yes. The readout sheets. I did that, too.

Q . . . So is it true that you have really no first-hand knowledge as to what the day to day job functions of these product specialists were? You might know some of the things they did, but not all of them?

A Not everything, no. Their actual job titles, no, or job, no, I don't know.

Q Did they all have degrees of some sort?

A Everyone of them.

Q Were they engineering degrees?

A Yes. Some of them were. We have had people [78] that had history degrees, civil engineer degree, chemistry, history major, we had English major; very, very diversified office.

Q But the ones who were in these product specialists or product analyst positions that you're referring to—

A They were all college people. Everyone of them. And the only college people—the only people that weren't college people when I was still there was Mike Meixell, Al Malarich, Dick Dean, Hugh Faust and myself, that I could recall. Might have been another one in there.

* * * *

[79] Q We were talking about some of the younger people who were not laid off at the same time you were. . . . In paragraph 16-A of the complaint, you allege that the defendant retained younger, less experienced, less skilled employees with less seniority, and you want to say, in part, because your salary was higher than the salary of some of those employees.

Could you tell me what the factual basis for that allegation is? First of all, what employees are being referred to in that allegation; and secondly, how do you know what their salaries were?



A Well, as far as the salaries are concerned, it was against company policy to discuss them, although when we get a couple of the kids together, you can hear them talking. And some were making as little as 16, and some as high as 17,5 to start. And I knew that I was making a goodly bit more than that.

Q How about people like Meixell or Malarich, did you have any idea what their salaries were?

A I don't know what Meixell's was, nor Malarich's, although I am inclined to believe that Malarich was a [80] little higher than me, politics involved, again, there. He was considered a senior installation specialist.

Q Okay. So, then, he is not one of these employees that you're referring to—

A No.

Q —when you say his salary was higher? Okay.

Nor is he one, when you say it was in part because of your age, he is not an employee that was younger than you?

A No.

Q So is it, again, . . . these people with engineering degrees?

A Right.

Q And who were in the product analyst, product specialist—

A Right.

Q —type of work that you're referring to in paragraph 16-A?

A Right.

[81] Q Then in paragraph 16-B it's alleged that "defendant has begun to hire new employees under the age of 40 rather than recall plaintiff." What's the basis for that allegation?

A That was hearsay from a former employee at the other department.

Q Okay. What's the name of that employee that you heard this from?

A Harry Hrbacho . . .

* * * *

Q And did he identify who any of the individuals are that were rehired, their names?

A Two—wait, let me think. Should I say two or not? Himself, and a man from our department were both laid off, not necessarily at the same time. I don't know what the interim period was between layoff, but [82] they called him back for a particular job that lasted maybe a week or so, and let go again. And from my opinion, understanding of the other individual in our department, the same thing happened to him. He got laid off just before Christmas, and got called back some time after Christmas for a short duration.

Q Who was that employee?

A We called him Dick Dean, . . .

* * * *

Q And how old is Harry Hrbacho?

A Maybe a year or two older than me. 58, 59.

Q How about Dick Dean?

A Dick, two, three, four years younger than me.

Q Okay. Well, in paragraph 16-B it's alleged that the company has begun to hire new employees under the age of 40. Both of those would appear to be over the age of 40.

A No. No. These guys had been working with the company for quite a few years. They got laid off, called back for a short duration, and got laid off [83] again. I am referring here to brand new employees, period.

Q Okay, that's what I want. Do you know the names of any of the brand new—

A I have no idea whatsoever. Only hearsay from Harry Hrbacho.

* * * *



Q So you don't have any direct knowledge—

A No.

Q —of either the identy [sic] or the number of any new employees—

A No.

Q —under the age of 40?

* * * *

Q In paragraph 16-D of the complaint you allege that the defendant failed to transfer you to another department, or to retrain you, and insted [sic] trained [84] younger, less experienced and skillful employees, that you could have done with proper training.

Could you tell me which younger, less experienced and less skillful people you are referring to in that paragraph?

A There was two people that I know of, one was our secretary that was transferred to another department because they no longer needed her services in ours. And I am assuming that people younger than her in seniority —I think she went down to the, where all—the steno department, I guess you call it, and she got put back in there.

Then there was a woman in international department, from the way I understand it, from the way she told me, she was being demoted from international to another department because they no longer needed her services. They are cutting on costs.

And Dick Dean, he, from what I understand the way he explained it to me, he was being transferred to international for special project in South America, but it didn't last too long.

Q How long?

A It could have been a week, or two or three months for all I know, but it was just for a short duration; come back up to his original department, and [85] got laid off again.

Q What was his original department?

A Our department.

Q What was his position in your department?

A Oh, I don't really know. He wasn't considered had [sic] an installation specialist, although this is what he did. He wasn't a product analyst or a product engineer. I don't really know what his particular title was.

Q Okay. Now, let me just back up a minute with respect to this secretary who was transferred from your department to the stenopool. You are not suggesting that you should have been—

A No.

Q —transferred to the stenopool?

A No. I am suggesting I should have gotten that job in international, which I have been asking for for years.

Q That's the woman—

A No.

Q Let's talk about, next, the woman in the international department, and she was demoted to some other position?

A Right.

Q What was her position in the international [86] department?

A Secretary.

Q Again, this isn't a transfer—

A No.

Q So the one you are referring to in paragraph 16-D is the transfer of Dick Dean to a job in the international department for a special project?

A The way I understand it, the way he told me that he understood it, that it was going to be a permanent type position. But it turned out it didn't work out, . . .

* * * *

Q Let me clarify. Are you alleging that you should have received this job in international that Dick Dean received?

A Right.

Q Okay. Is there any other job that you're aware of that people were transferred to that you—

A No.



Q —think you should have received?

[87] A No. But there were other jobs I could have, possibly, have gone to. I could have gone over to Garber Research Center, I could have been retrained, take a demotion, lower my pay scale. I could have taken anything. But they never offered me a thing.

Q What are some of the jobs that you think you should have been transferred to, even this one, Garber Research?

A I could have been a bricklayer out there.

Q And it's your contention that their failure to transfer you into a bricklayer position at Garber Research was because of age?

A It was all based on age.

Q Did they transfer any of the other installation specialists into bricklayer positions at Garber Research?

A Not to my knowledge.

Q Okay. Did they transfer any of the installation specialists to any positions?

A No, sir.

Q Okay. Are there any other positions that you believe you could have been transferred to rather than having been laid off?

A I could have been sent to the works department, I could have run a piece of machinery, I could have [88] done most anything, really, anything in the mechanical field.

Q All of these positions would have required some sort of a training period for you?

A But with my background from the brick plant, it would have taken very minimal training, like maybe a week or two. Some jobs there I could have done right away.

Q Had you ever performed any of these jobs?

A Not directly, but indirectly. Using an air hammer, ramming, packing.

Q And are you aware of whether any openings existed on these jobs?

A No, I wasn't.

Q Okay. And I don't want to put words in your mouth, but as I understand it, your contention is that they could have transferred you into some of these positions even if they had had to lay off somebody else to do that?

A You would have thought, because of my seniority, even though—

Q Right, I understand. Say you have a ten year employee over here who is a bricklayer, you are saying they could have transferred you into that position and laid him off instead of you?

[89] A Bumped him back, yes.

Q Now, you go on to state that you were willing to take a cut in pay, if necessary. Did you ever express that willingness to any person at Dresser Industries?

A No, sir. At the moment, I was just too upset to even think of anything.

* * * *

[111] Q Now, you recall that in your conversation with Sheatsley, and Jamison was present, Sheatsley did make the statement that the reason for the lay off was economic, that business was down; isn't that correct?

A He didn't say it in them words, but he implied as much, which I knew. He did say business was bad.

Q Okay.

A And like he said, he had to start somewhere, and he started with me.

Q Do you have any facts, or are you aware of any facts that could contradict that position that business was bad, and that that was the reason for the layoff?

A No.

* * * *

[113] Q During the period of your employment, did anyone at Harbison-Walker ever make any comments



about your age, or about—in the sense of it having an effect on your future with the company?

[114] A No. They wouldn't dare.

Q You are not aware of any comments being made by Mr. Sheatsley or Mr. Jamison or anyone else at or around the time of the layoffs that they were trying to get rid of older employees and keep younger employees, anything like that?

A Exactly, yes.

Q What comments are you referring to?

A No comments, but their actions, what they did, was in the first part of, I would say February or March, around that area—

MR. LOGAN: Is this of 1982?

A '82. —they sent out letters to all people who were 60 or going to be 60 in the year 1982. And they offered them a pension. Two people in our department took it.

* * * *

And from what I understand, there were 38 people in the Pittsburgh office that took advantage of it.

Q Did you receive a copy of that letter?

A No. I wasn't 60, or going to be. But the [115] receipients [sic] of it told me what they got. In fact, the ones who turned 60, or were 60, were being paid by Harbison-Walker for two solid years their income and benefits, the whole ball of wax, until age 62, at which time they will take their social security benefits and company pension.

Q All right. Other than this letter that you say was sent out to employees about what, an early retirement? Would that be an accurate description of it?

A Right.

Q Other than that letter, are you aware of any comments made by anyone at the company concerning, or that would reflect a desire to get rid of older employees during this layoff?

A Nothing that I had ever heard.

Q Okay. How about that anyone else might have heard that might have been related to you?

A It was never discussed.

Q So you don't have any knowledge, regardless of its source, of any comments?

A I am not saying it didn't happen. I am saying I didn't hear anything.

Q Nor did anyone hear it and relate it to you?

A No. . . .

* * * *

[117] Q In paragraph 5-C, or—I am sorry—C-5 of this PHRC complaint, you allege that the respondent maintains a policy of laying off personnel based on their seniority and skill requirements.

Am I correct in saying that the sole basis for that allegation is the newsletter that—

A (Indicating.)

Q You are showing me here a newsletter?

A "I can assure you we don't take layoffs lightly. They are very serious decisions, and we realize the seriousness of the impact on each household they affect. In fact, layoffs are implimented [sic] only after an extensive review of alternatives." They couldn't possibly have done any review on me.

"Obviously, layoffs, when they are necessary, occur in departments or operating units most affected by the business decline. Length of company service and skill requirements necessary to carry out the [118] reduced business activities are the most important considerations."

MR. LOGAN: Mr. Brieck, what document are you reading from there?

THE WITNESS: This is the spring edition of '82 Dresser News sent by way of Dallas. . . . Page one, top right-hand column.

* * * *



Q Is there anything other than that newsletter reference that is being referred to in paragraph C-5 of the PHRC complaint?

A (Indicating.)

Q That's the only thing?

A Only written thing.

Q How about any stated—

A Well, I got that letter that was for the thousand dollars raise that led me to believe that it wouldn't happen to me, although it's related to it, not directly to this particular article.

[119] Q Yes. But my question is, to a policy of laying off based on seniority and skill requirements, the only thing that you're aware of that supports that allegation is the newsletter article?

A Right. If they have a policy book, it's not privy to the people, other than the top officers.

Q I see. You have never been given an employee handbook, or anything like that—

A No.

Q —that relates to that?

A I am sure there is one, but I have never seen or heard of one.

Q You don't recall receiving an employee handbook?

A No.

Q The only thing you were relying on was the newsletter, and the letter from Jamison?

A This problem, I almost have to flip a coin which convinced me most I wasn't going to get laid off, the personal letter or this. Between the two, they weighed a ton. . . .

* * * *

[120] Q Just one last question, which maybe might permit you to make whatever summary you would like. Other than the facts and the answers that you have given me this morning and this afternoon, are you aware of

any other facts that in any way support your allegation that age was the reason for your layoff?

A Only because they laid the older people off, they were pensioning them off, gettin rid of that economic burdon [sic], as they call it.

Q Anything else?

A Not offhand.

* * * *



## EXCERPTS FROM THE DEPOSITION OF LARRY SHEATSLEY

(Record 180a-234a)

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[6] Q. Mr. Jamison was Mr. Brieck's supervisor?

A. Correct.

Q. Did Mr. Jamison report to anyone in between you and him?

A. No. He reported directly to me.

* * * *

Q. To your knowledge, had Mr. Brieck ever been reprimanded, counseled, warned or disciplined in any way by Haribson-Walker because of alleged poor work performance?

A. Well, I'm aware of one minor incident in the latter days of his employment.

* * * *

[9] Q. When you say there was one minor incident, Mr. Sheatsley—

A. That I'm aware of.

Q. I just want to look at the term "minor." Was any [10] note of this placed in Mr. Brieck's personnel file, to your knowledge?

A. Not that I'm aware of.

Q. Was this a—in terms of constructive criticism, or was it—what was the nature of the conversation between yourself and Mr. Jamison and Mr. Brieck?

A. I think it was on amiable terms and just the caution of being more careful in the future.

Q. Do you recall any other problem with Mr. Brieck's work performance during the time that you were with the company? Did any other problem ever come to your attention during the time that you were with Haribson-Walker and that Mr. Brieck was with Harbison-Walker?

A. Not to my personal attention. Of course, I was only Gene's supervisor since taking over as General

Products Manager in the fall of 1979, so I'm not familiar with whatever transpired prior to that time.

Q. Since the fall of 1979, you're not aware of anything else?

A. Not specifically problems in his performance of [11] his duties.

Q. Did Mr. Jamison report any problems to you at any time from the fall of 1979, until Mr. Brieck's termination?

A. Not that I'm aware of. Not that I recall.

* * * *

Q. Did you have any input into the evaluation of Mr. Brieck's work performance, Mr. Sheatsley?

A. Yes.

Q. What was that input?

A. It was a yearly evaluation of basically his job performance which would have become part of his official personnel records.

Q. What role did you play? Were you just a reviewing supervisor and Mr. Jamison did the actual reviewing, or did you do the reviews?

A. I think we collaborated.

Q. You and Mr. Jamison?

A. Correct.

Q. Do you recall what Mr. Brieck's evaluations were at any time from when you became General Products Manager until his separation from [12] employment?

A. I believe they were basically satisfactory ratings. There may have been a fair to satisfactory rating in that time span.

Q. Were there any evaluations that noted any poor work performance on the part of Mr. Brieck? Was there just an overall numerical rating?

A. Basically that's correct. In other words, there were no forms that had to be filled out, if that's what you mean.



Q. Right. What factors went into the rating of Mr. Brieck?

A. Our personal evaluations of the work that he was carrying out on the various assignments that he was given as well as reflecting the comments and so forth of the people in the field. In other words, he served in the field under accounts handled by various salesmen. So we would get feedback from how he performed his task not only directly, but indirectly through the salesmen that covered the accounts that he performed these services.

* * * *

[13] Q. Once an evaluation was completed, how was that evaluation communicated to Mr. Brieck?

A. Basically in that timeframe we had an annual review kind of thing on the anniversary date of the last salary increase. Sometime during that month we would have passed along our comments to Gene at the time that we reviewed any salary increase; merit of salary increase.

Q. Do you recall specifically having any discussions with Mr. Brieck about his evaluations?

MR. HOLLIHAN: For what period of time?

MR. LOGAN: This is from 1979, to 1982. From the fall of 1979, when Mr. Sheatsley became the General Products Manager at the Iron & Steel Market until [14] July 1982, when Mr. Brieck was separated from employment.

A. I can't recall any specific direct conversations with Gene. That would have been most likely handled by Don Jamison, his immediate supervisor.

* * * *

[15] A. What was your personal opinion of Mr. Brieck's reliability in terms of if he was given a task to carry out whether he could do it efficiently and in a timely fashion?

A. Generally satisfactory. In other words, I would expect that he would carry out his assignment as given to him.

Q. Was Mr. Brieck sent on Overseas' assignments from time to time?

A. Yes.

[16] Q. Were other individuals sent on Overseas' assignments, or was it most likely Mr. Brieck who would be doing that in terms of the Installation Specialists in the Iron & Steel Market?

A. I'll say I'm aware that others were sent on installation assignments Overseas besides Mr. Brieck. Specifically who and when, I'd have to go back and check.

Q. If you had an Overseas' installation to perform, was Mr. Brieck the one you would normally rely on to do the job; to make sure the job got done?

A. I wouldn't say normally. He would be one of a group that we could have chosen for that kind of assignment.

* * * *

[17] Q. In July 1982, Mr. Brieck was separated from employment. Could you describe the circumstances surrounding that for me?

A. Okay. Immediately preceding that time period; in April, as I recall, of 1982, the company identified the fact that business conditions were or had been deteriorating and that they were offering eligible employees early retirement. The reason why I'm firsthand conscious of that is because a couple of members in my department opted to take that offer in April and that became effective, as I recall, the end of May as far as the early retirement date.

Q. Do you recall who those individuals were?

A. There were two individuals in my department; [18] Jack O'Reilly and Nick Napora. And then subsequently in approximately the middle of June, my immediate superior asked me orally to identify individuals for consideration of temporary furlough due to the severe depressed business conditions that we were experiencing and our shipment activity had greatly fallen off and the immediate outlook was not one indicating improvement



and, therefore, we were going to have to do something to cut our costs and that one of those actions would be to temporarily furlough some employees. So he asked me, as I recall, to identify six individuals from my department for consideration of temporary furlough.

Q. Did you do that?

A. Yes, I did.

Q. Who were those individuals that were identified?

A. Mr. Brieck, of course; Miss Maus.

Q. Could you give their first names, also.

A. Cindy Maus.

Q. What was her title?

A. I'm not certain. I just don't remember off the [19] top of my head. Do you want me to go on?

Q. Yes, please.

A. Mr. Gerry Dodds.

Q. What was his job position?

A. I believe he was a Market Analyst or a Product Analyst. J.J. Schwerer. I believe he was a Product Analyst. I'm not positive about all these job titles in 1982.

Q. That's okay.

A. W.E. Meixell, Installation Specialist; D. L. Smith, Products Specialist. I believe that adds up to six.

Q. Yes, it does add up to six.

Was there a Mr. Malarich, also?

A. Not at that timeframe in June. That came subsequently.

Q. What did you do when you identified those six people? What did you do with that information? Did you take it to your superior?

A. Yes. I had an oral request from my superior and I responded to that oral request identifying these six individuals as possible candidates for consideration of temporary furlough.

[20] Q. How did you base your decision to recommend those six people for temporary furlough?

A. Well, as I explained a moment ago, the very depressed business conditions resulted in a great fall-off

in our shipments of refractory products to our customers. As I recall, the steel operating rate, for example, had fallen to under 50 percent of rated capacity and in a similar fashion our shipments had fallen at or below that kind of level. Since our products were not being bought and used via customers, obviously we had less need for installation service, so that was one consideration.

If we were not shipping our products, obviously they were not being installed in their normal level and, consequently, we had less need for installation of service people. So that was one of the first areas where, let's say, need had declined; support need.

Q. What were some other considerations?

A. Also the general activity in some of the business segments in a similar fashion had declined, so those areas which were, let's say, most depressed [21] were again less in need of people to support that effort; marketing and technical support effort. So it was basically a relatively simple matter of deciding where our needs were reduced and cutting back of personnel accordingly.

Q. Were there any other considerations than the two you've mentioned; number one, that there was less need for installation services and, number two, that there was less need for marketing support and technical support in certain of the business areas?

A. That was basically it. Just reduce need for service support.

* * * *

Q. In terms of the individuals who were recommended as candidates or who were identified as candidates [22] for temporary furlough in terms of the installation service people, how was it decided that Mr. Brieck and Mr. Meixell would be recommended as candidates for temporary furlough?

A. Well, first of all, they were two of—you mentioned Meixell and Brieck?



Q. Yes.

A. They were two of four Installation Specialists at the time, so since assistance in the installation of our refractories was definitely less needed, that was a prime consideration for those two individuals, first of all.

Q. Why those two rather than the other two Installtion Specialists?

A. Well, combination of factors. Number one, Mr. Meixell was of relatively recent hire, as I believe. He came with us in 1980, and, therefore, was one of the less senior installation specialists of the group. Then the other three, as I recall, were about of the same service base timewise with the company; that is, Mr. Brieck and Mr. Malarich and Mr. Faust; about the same [23] years service with Harbison.

Q. How did you decided between Mr. Brieck and Mr. Malarich and Mr. Faust?

A. It was judged that between Mr. Malarich and Mr. Brieck Mr. Malarich was more versatile, had a broader experience base in all the application areas to which we had to provide service in the Iron & Steel Market and was judged to be slightly more capable than Mr. Brieck on a past performance basis. Mr. Faust had the capability of a multi-functional capability because he had initially experience in the area of administration and sales correspondence and the area, a market segment area that he was working under which was Iron Production involved what we call quite a bit of project bidding and he could support the Product Manager in analyzing and putting these project bids together in preparation for a quotation, so that was still a needed requirement in that area at the time.

Q. Was there any consideration given to Mr. Brieck being able to perform that project bidding function [24] that you felt Mr. Faust could perform?

A. There wasn't any firsthand consideration given. In the total evaluation, it was recognized that he did not have those developed skills that Mr. Faust had in that area.

Q. How did Mr. Faust develop those skills?

A. Initially as I had said he had initially worked in the Administration Department as a Sales Correspondent.

Q. That was how long prior to 1982?

A. I believe that's where he started with the company and [was] there for some years. I don't remember exactly when he was transferred to our department from administration.

Q. How long had he been an Installation Specialist?

A. For several years. I don't remember exactly.

Q. Was any consideration given to the salary of the four Installation Specialists in—

A. I don't even believe I was aware at the time of—I didn't even look up their salary at the time this was being considered.

Q. When you were asked by your superior to identify six people, was there given any thought to—I [25] assume it was for cost cutting reasons? When you were asked to identify the six people, the whole purpose was to cut costs?

A. Well, it was explained to me, as I previously stated, that due to a severely depressed business condition where our business had fallen off significantly and we were running considerably below plan that, yes, we would have to—the company would have to cut costs.

Q. Were you given a certain monetary figure in looking at someone's salary and benefit package—

A. No.

Q. —and to total up six people or a number of people that would approximate a certain amount you were expected to cut in terms of cost?

A. No. My superior only advised me as far as a guideline was concerned that it should be guided by what our current needs and their future needs were for providing service and support to the field. So no costs or targets or anything of that nature were identified.

Q. After you made your recommendation—I assume you—after you identified those six individuals, [26] what



did you do with that information? Did you take it to Mr. Sekeras?

A. Yes.

Q. Can you recall the discussion with him?

A. There wasn't too much discussion, as I recall. There was just some general review of the names that I had orally submitted, and I don't believe there was a need really in that case for a lot of discussion because Mr. Sekeras was firsthand familiar with our department, the personnel in our department since he was a department head of the same department prior to my appointment. In other words, he immediately preceded me as General Products Manager of Iron & Steel Market, so he was firsthand familiar with the operation of the department and the personnel in the department and our overall business situation at the time.

Q. Did you have a discussion with Mr. Jamison either before you went to Mr. Sekeras in helping you to identify these six candidates for temporary furlough or when you met with Mr. Sekeras? Was Mr. Jamison a part of that [27] process?

A. No, he was not.

Q. Did you seek any input whatsoever from Mr. Jamison as to which of the four Installation Specialists should be retained and which should be recommended for temporary furlough?

A. No, I did not.

Q. How long after you identified the six people was the notification made to the individuals?

A. Approximately within a couple weeks. As I recall, the original request was made around the middle of the month of June and the first temporary furlough was issued on July 2nd.

Q. Can you describe for me the means by which the temporary furlough of Mr. Brieck was communicated to him?

A. It was handled personally by myself and Mr. Jamison with Mr. Brieck.

Q. Can you describe what took place?

A. Gene was called into my office and it was explained that simply due to severe fall-off in our business and generally very depressed marketplace condition that it was necessary to [28] advise some people that they were going to be placed on temporary furlough and that he was one of these individuals that unfortunately had to be notified of this action. I explained to Gene at the time that it was nothing personal or anything about him. It was just a matter of business conditions being beyond our control and that he was not being singled out as an individual in this action; that there were numerous other marketing people that were similarly affected. I did not identify who those people were or what was going to happen when because I did not know myself the individuals specifically involved.

Q. What did Mr. Jamison say during this meeting, if you can recall, or what did Mr. Brieck say, also?

A. I honestly don't remember any specific points that either party mentioned. I know Gene was very upset and basically I think—as I recall—the expression of understanding as far as Harbison's need for this action, but I don't remember any specific statements, comments or [29] points that were called out.

Q. Did he ask you why he was selected and not one of the other Installation Specialists?

A. He may have. I don't specifically remember whether he did or not.

Q. Do you recall saying anyting [sic] to him about why he and Mr. Meixell were selected for temporary furlough and not Mr. Malarich and Mr. Faust?

A. No. I don't believe I recall identifying that action.

Q. What was the scope of the temporary furlough as you saw it in June and July of 1982? How long did you think it would last or how long did your superior, Mr. Sekeras, think it would last?

A. They didn't identify for us any timeframe. All we had was some guidelines that we were asked to cover



to the people that we were furloughing, and these guidelines I think were generated by our IR Department and there wasn't any statement by either my superior or these guidelines as to the timeframe that this temporary furlough would be applicable to.

[30] Q. The IR Department is what?

A. Industrial Relations Department.

Q. There was still a need for Installation Specialist work in July of 1982, I assume. Someone still had to perform the Installation Specialist function?

A. Yes. Only at a greatly reduced level as compared to prior experience.

Q. Who performed the Installation Specialist function after July 2, 1982?

A. Well, of course, we still had two remaining Installation Specialists and the remainder had to be handled by the Products Specialist/Product Analysts Group. So it was simply spread among the remaining members of the department in a sense.

Q. So that the two remaining Installation Specialists performed that Installation Specialist function as well as some of the other individuals still in your department?

A. That's correct.

Q. Who were the other people that helped with the Installation Specialist function?

[31] A. That would have been essentially the total body from time to time of the remaining members of the department.

Q. Do you know who actually did that? I assume that there were people that had no prior experience in Installation Specialist work that couldn't do that?

A. No. That's not true. Essentially all of the other members of the department also had the capability if called upon to handle installation work. That was not their prime task or prime responsibility, however. They had other prime responsibilities other than installation; whereas, the Installation Specialists' prime responsibility was, in fact, heating [sic] in the installation of our products. Is that self-explanatory now?

Q. How many other members of your department were there after July 2, 1982; after this first temporary furlough?

A. After the first six?

Q. Yes.

A. 32. A total number of the department including [32] clerical would have been 32.

Q. Of those 32 that remained after the temporary furlough of the first 6, how many of those 32 actually, in fact, helped in doing Installation Specialist work in the months after then?

A. I wouldn't be able to say specifically, but the majority or nearly all or perhaps all of the remaining non-clerical personnel with the possible exception of Don Jamison and myself. So the various Product Managers, the various Product Specialists and Product Analysts would have all contributed in this installation service area.

Q. They would actually go on the job site?

A. Correct.

Q. What was the need then to have a special job description entitled Installation Specialist or Senior Installation Specialist if anybody could do the function?

A. Not anybody. Those who had the capability to perform that work. The Product Manager is obviously more concerned with many other things than installation work. As I said, that was not [33] their prime assignment. It would be way down on the list of responsibilities. Same fashion with Products Specialists. Installation service work was not one of their prime tasks. However, as business conditions continued to deteriorate, an individual within the department had to double up on his duties not by choice, but by the conditions at hand.

Q. Prior to identifying the first six people for temporary furlough, was there any consideration given to, perhaps, having Mr. Brieck do some other work that was elsewhere in the department that still had to be done and to lay-off someone else that maybe didn't have the experience in the range he had in Installation Specialist



work? Did you give any consideration to, perhaps, retraining Mr. Brieck or to putting him in another position to see if he could carry out some other function?

A. There was no serious consideration of putting Mr. Brieck into a Products Specialist role, for example—is that what you're indicating?

Q. Right.

[34] A. —because he would not have had the capability to do that at the time and with the reduction in personnel, we were not in a position to put somebody into a training program to learn another kind of job. It would also require in the case of a Product Specialist or a Product Manager's job a certain development of technical skills as well as installation skills so that, as I say, the prime tasks in these areas were of a different nature than just installation work.

Q. What kind of technical skills?

A. Well, the Product Specialist, for example, first of all, is responsible for the marketing concept in their application area as well as the refractory engineering aspects of the application and the products used in those application areas. So the majority of our Product Specialists are either graduate engineers or technically trained people. So they have—in addition to carrying out the marketing concepts, they also have the responsibility to properly apply our products, understanding how our products are best used in [35] the application, troubleshoot and problem solve from an engineering sense, again, in the individual refractory application areas.

Q. I understand that there were subsequent furloughs after these initial six people were put on temporary furlough; is that correct?

A. That is correct.

Q. When did the next round of furloughs take place?

A. Okay. Mr. Sekeras came to me again in the latter part of July; mid to latter part of July advising that business conditions were continuing to deteriorate and that we would need to again consider some additional

temporary furloughs and, as I best recall, he asked for at least two additional candidates for consideration of placing on temporary furlough. At that time, I submitted, as I recall, two additional names.

Q. They were?

A. Mr. Malarich and Mr. Heath.

Q. What were their first names?

A. Albert Malarich and Dennis Heath.

Q. What were the job positions of each?

A. Mr. Malarich was an Installation Specialist and [36] Mr. Heath was a Staff Correspondent.

Q. What were your considerations in identifying these two individuals for furlough rather than the other people that remained in the department?

A. Okay. Somewhat similar fashion to the first round. With the continued declining of our shipments, again less and less installation service was being required, so that was one—the primary consideration, let's say, for furloughing Mr. Malarich. . . .

* * * *

Q. Were there subsequent furloughs after these two individuals were furloughed?

[37] A. Yes.

Q. When did those take place; the next round?

A. I believe that occurred in November of 1982, and, once again, my superior came to me to advise that further deterioration of our level of business was occurring, and that we were going to find it necessary to furlough additional people. As I best recall, he orally asked me for names of about four individuals; four additional individuals for consideration of furlough.

Q. Who was selected?

A. Mr. Faust. . . . Hugh. Mr. David Westphal, Mr. Douglas Wright and Mr. Glenn Shortman.

Q. The job positions of each?

A. Mr. Faust was an Installation Specialist. Mr. Westphal was, as I recall, a Product Analyst—well, Mr. Westphal and Mr. Wright and Mr. Shortman I believe were all Product Analysts.



Q. Were any of those individuals subsequently [38] re-hired or brought back to work; any of these four?

A. Three of the four were subsequently re-hired or brought back.

Q. Were they re-hired, or were they recalled?

A. Combination of both.

Q. Can you describe for me what Mr. Faust's situation was when he was brought back? Was he re-hired, or was he recalled?

A. I'm not positive, but I believe he was recalled. I'd have to confirm that with my personnel records, but I believe he was recalled.

Q. Do you know when he was recalled?

A. I'm going to say as I can best remember middle of 1983, mid 1983.

Q. What were the circumstances necessitating his recall?

A. Business conditions were beginning to improve slightly from the low point at the end of 1982, and early 1983, and we could justify some additional help in the department to cover some of the increased activity in installation servicing.

[39] Q. Was there any consideration given to recalling or re-hiring Mr. Meixell, Mr. Brieck or Mr. Malarich rather than Mr. Faust in mid 1983?

A. Not at that time, no.

Q. What was your understanding of the terms under which Mr. Brieck was separated from employment in July of 1982? We had talked about it being a temporary furlough. How long was that furlough to have existed?

A. The guidelines that I covered at the time was nine months. If not called back within nine months, the furlough would become permanent.

Q. Was that the same for the second round of furloughs that took place in late July of 1982? Was it also—

A. I believe so.

Q. And in November of 1982, was it also a nine-month period?

A. I'm not positive. I don't remember specifically whether the same timeframe applied or not.

* * * *

[41] Were there ever any individuals who were hired back or hired as new hires following nine months after the beginning of the temporary furlough period?

A. I believe Mr. Westphal in that case, for example, was re-hired after the nine month period.

* * * *

[42] Q. In the period following July 2, 1982, until the present, have there been any Installation Specialists who have been hired by Harbison-Walker in the Iron & Steel Group?

A. Since 1982?

Q. Yes. Since July 1982.

A. Yes. There's been one individual who has been hired, newly-hired into the Iron & Steel.

[43] Q. What was that person's name?

A. O. H. Strom.

Q. Is that Otto Strom?

A. Correct.

Q. When was he hired?

A. Middle of 1984.

Q. He was hired into what position?

A. Installation Specialist or Senior Installation Specialist. I don't remember exactly the title.

Q. Do you recall how he was hired? . . .

* * * *

A. Well, it's a complex series of events. Bethlehem Steel Sparrows Point was a very important account for us and, as I say, a series of events led up to this particular action of hiring Mr. Strom. We had been suffering market share loss at Bethlehem Steel Sparrows Point. Coupled with that, our salesman who was calling on that [44] account resigned and also concurrently Mr. Strom



was an employee of Bethlehem Sparrows Point with 30 plus years service with that company at that location specializing in the area of masonry work supervision as well as other project engineering supervision activities.

He was eligible, as I understand it, for early retirement from Bethlehem Steel Sparrows Point and we had to assign a new salesperson to that account and we were desirous of improving our situation market sharewise, our participation with Bethlehem Steel Sparrows Point and so a combination of these events resulted in our being interested in hiring Mr. Strom to assist us in our task of gaining greater participation in the business of Bethlehem Steel Sparrows Point, so, therefore, he was brought on board to laregely [sic] assist in this effort. He remains a resident of the Baltimore area and spends most of his time working directly with our salesperson in satisfying our requirements at Bethlehem Sparrows Point. So that was—

Q. Roughly how old is Mr. Strom?

[45] Q. His mid fifties, I think. He was 55 when we hired him about a year ago, so he's either 55 or going on 56. . . .

* * * *

Q. Was there any consideration given to re-hiring Mr. Brieck for that position that was filled by Mr. Strom in mid 1984?

A. No, there was not.

* * * *

[54] Q. Was there any other person in the Iron & Steel Group that was transferred to another department of Harbison-Walker?

A. Not that I recall.

Q. Did you ever hear any comments from or receive any letters or documents from various customers of Harbison-Walker praising Mr. Brieck or thanking him for good work that he had done?

A. Yes. I would be aware of some thank you notes from probably a couple of customers or more on Mr. Brieck's behalf.

[55] Q. Did you ever hear any negative comments about Mr. Brieck's work performance other than concerning this earlier incident with Wheeling-Pittsburgh Steel?

A. Did I hear of any comments?

Q. Yes.

A. Negative comments?

Q. Did you hear yourself of any other incidents than the Wheeling-Pittsburgh Steel incident that you testified about at the beginning of this deposition?

A. I have to say that I recall some negative comments being made, but I cannot specify or identify what time-frame, what reference they would pertain to at this time.

Q. Did those comments play any role whatsoever in the decision to select Mr. Brieck as one of the candidates for the temporary furlough?

A. Not directly.

Q. Did it indirectly play any role whatsoever?

A. Those specific comments?

Q. Any comments about negative work performance or—

A. Well, that would have been, let's say, a part of [56] one's judgment of evaluation of his past performance. That's all.

Q. Did you do any formal written ranking of the four Installation Specialists to see which of them would be laid off as part of the first six to be laid off?

A. Do you want to repeat that question?

Q. Did you do any formal ranking of the four individuals; for example, in writing? Did you have certain—

A. No.

Q. —factors and you gave certain points for each factor and weigh the various factors to arrive at which of the four should be part of the first lay-off or the second lay-off?

A. No, we did not.

* * * *



DEPOSITION EXHIBIT 1

INTEROFFICE CORRESPONDENCE

HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.,
2 Gateway Center, Pittsburgh, Pennsylvania 15222

| To: | Date: |
|---|---|
| See Below | July 8, 1982 |
| From: | Refer: |
| W.G. Sekeras | |
| Subject: | cc: |
| Iron & Steel Market | L.L. Sheatsley |
| Impact of Furloughs | Noted 7/19 L.L. Sheatsley |

To:

T.C. Joyce—Region 11
J.S. Henderson—Region 13
R.B. Armstrong—Region 15
C.E. Lawhon—Region 15, St. Louis
W.K. Brown, Region 15, Houston
H.C. Willenbrock—Region 16
W.T. Engelbrink—N/A 17
W.D. Meloy—N/A 18
E.W. Koenig—N/A 19
M.E. Cole—N/A 20
K.W. Hansen—N/A 21
G.H. Shrewsbury—Region 22

By the time you receive this letter you will have learned of another 10% cutback in salary personnel throughout Harbison which became effective on July 9. The impact on Iron & Steel as a result of the early retirements, the first reductions and now the second reductions means we have lost, temporarily, approximately 20% of our organi-

zation. In addition, our warehouse forces have been reduced and our office staffs are at the bare bone.

The heaviest impact in the second reduction was in our Marketing Support Group which will seriously reduce our capability from Pittsburgh to follow installations.

It should be obvious to each of you that considerable thought was given prior to any decisions on furloughs and the fact that we again lost well over $3 MM in June contributed to the decisions. With this reduction in forces, there will be considerable overlapping of job responsibilities and I am counting on each of you to pull your teams together to fully accomplish maximum sales under these conditions. Sales people will be required to do service work in the warehouses as needed, answer telephones as required, and follow installations as required. All of us will undoubtedly be working more hours than we have in the past because we will do the job.

I also expect each of you to take additional roles and responsibilities to help fill the gaps as we make every effort to accomplish the sales. This means you may be required to make personal sales calls, even follow installations or whatever is required.

These obviously are not the best of times for the total U.S. economy and, therefore unprecedented actions had to be taken. We do not know when those furloughed will be called back, it all depends on the U.S. economy and our steel industry. You can be assured our Management is as anxious as you to have our full team back in place.

Since we will be asking everyone to work harder as a result of our deductions [sic] it is obvious that we cannot accept anybody who is reluctant to do their share. Therefore, if any of your people do not feel they want to participate on the remaining team with a heavier burden, then please let me know and we will accommodate them.



We will continue our budget restrictions including no dinner and golf entertainment. I have also instructed Larry Sheatsley and his department that we must give very careful consideration to all travel and also car rentals will be kept to an absolute minimum even during installation jobs that are approved. Although this news is not cheery, I think all of you recognize the need for these actions. We have a very strong organization remaining with our best people in the right positions and I am more confident than ever that with the relationships you fellows have developed with your customers that we can maintain market share even with these reductions.

For your information, the steel industries projections for July, August and September are pretty bleak, but come October in the eyes of our customers are good signs appearing for our economy, and steel production should start picking up. When that happens brick will be required in a hurry and we may even have some fun.

WGS/baq

## EXCERPTS FROM THE DEPOSITION OF DONALD JAMISON

(Record 235a-246a)

---

[4] Q. . . . [D]id you have occasion to supervise the Plaintiff in this lawsuit, Eugene Brieck?

A. He reported to me.

Q. For how long a period of time did Mr. Brieck report to you?

A. I can't really—I'll say probably from like 1975-1976, until he was laid off.

Q. What was your opinion of Mr. Brieck's work performance in the period of time that he reported to you?

A. I always rated him as an average performer; adequate for the Installation Specialist work that he did.

Q. In the rating system that was applicable at Harbison-Walker, there were five different rating numbers, as I understand it, from one to five. How would he normally be rated by you? A three?

A. A three, yes, for incentive purposes.

Q. That stood for what? Fully satisfactory?

A. Satisfactory, average; uh huh.

Q. Were there any Installation Specialists who rated higher than Mr. Brieck?

[5] A. That I supervised?

Q. Yes.

A. I typically rated Al Malarich higher.

Q. What was Mr. Malarich's rating?

A. Usually a four; three and a half to four.

Q. Was there anyone that rated lower than Mr. Brieck?

A. At one time we had a Joe Scott who was an Installation man and he ranked at the same level or slightly lower. He retired.



Q. In 1982, there were I believe four Installation Specialists within the Iron & Steel Market; is that correct?

A. Yes.

Q. There was Mr. Brieck, Mr. Malarich, Mr. Meixell and Mr. Faust; is that right?

A. Yes. Meixell did not report to me.

* * * *

[6] Q. What did Mr. Meixell do?

A. Well, he worked on bills of material, engineering and to some degree a little bit of pricing, material choice in some instances.

Q. Didn't all of your Installation Specialists do some of that?

A. No.

* * * *

[7] Q. Mr. Jamison, when Mr. Brieck was laid off in July of 1982, did you have any discussions with Mr. Sheatsley or anyone else in the decision to—or did you have any input in the decision to—

A. No.

Q. —lay Mr. Brieck off?

A. No.

Q. Was your input sought by Mr. Sheatsley or by anyone else as to which of the four—

A. No.

Q. —Installation Specialists should be furloughed?

A. No.

* * * *

[8] Q. When did you first hear, Mr. Jamison, of any lay-off that was going to take place in the Iron & Steel Market?

A. The day that Gene was laid off.

Q. What did you hear?

A. Just that there were going to be lay-offs.

Q. You had not heard anything about this previously from Mr. Sheatsley?

A. No. Rumors, of course, are prevalent in a large company. Maybe not in law firms, but in large companies.

Q. Had you had any discussion prior to July of 1982, with Mr. Brieck about the possibility of his being laid off?

A. No.

[9] Q. Do you recall any discussion with Mr. Brieck maybe in the period of a year or two before then when he asked whether he might be laid off?

A. I believe that when we had a luncheon for his 15th anniversary he asked about that and I think Mr. Sheatsley and I said there were no plans at that point in time for lay-offs.

Q. Do you recall Mr. Brieck expressing any—whether he expressed any concern about being laid off in that luncheon?

A. I think he just asked what his status was. Business by that time had slowed down from our prior level of activities that he was typically used to.

Q. Do you recall who said what? Did Mr. Sheatsley say that there were no plans for lay-offs or did you say that or did you both say it?

A. Probably Mr. Sheatsley.

Q. Were there any comments made of a more affirmative nature than that in terms of reassuring Mr. Brieck that he would not be laid off?

A. Not that I recall.

* * * *

[11] Q. Can you describe that meeting [at which Mr. Brieck was laid off]; who said what, where it took place and so forth?

A. In Larry Sheatsley's office and I believe Larry did most of the talking and told Gene that because of business conditions he was going to be furloughed and explained the details of what rights he retained as far as medical and the time of which his separation would become permanent if he was not called back and so forth and that's all I really recall, and Gene kind of said he thought it was coming or thought it might be coming or something like that. That's all I really recall of the meeting.



Q. Do you recall whether there was any mention made of plans for the future in terms of his being recalled or re-hired?

A. Only that he would be called back as business conditions dictated; entirely based upon business. [12] That's why he was being laid off.

* * * *

Q. . . . There was a subsequent lay-off when Mr. Malarich was laid off?

A. Uh huh.

Q. Was there any discussion you were aware of as to whether Mr. Faust or Mr. Malarich should be laid off; between the two of them, who should go first?

A. Not that I was involved with.

[13] Q. Mr. Sheatsley did not seek your input and you didn't give any input into who should be recommended for that second furlough?

A. None.

Q. Subsequently business picked up; that is, subsequent to July of 1982, and there was a need to recall or re-hire various of the Installation Specialists that had been laid off and I believe Mr. Sheatsley testified that Mr. Faust was brought back.

Do you recall the circumstances under which Mr. Faust was brought back?

A. I believe he was brought back when Al Malarich retired.

Q. Maybe you can describe for me—the people underneath your supervision, can you describe which of the Installation Specialists were laid off when?

A. I believe Gene was laid off first and then Al Malarich and then Faust, as I recall.

Q. And you say Mr. Faust was brought back when Al Malarich retired?

A. Yes.

[14] Q. Had Mr. Malarich been brought back?

A. Yes, he was brought back.

Q. When was Mr. Malarich brought back?

A. In early—sometime in 1983, to do a special job; just a temporary.

Q. What was that job?

A. I believe it was to install a degasser lining at Mack Steel up in Michigan. That's my recollection.

Q. How long did that job take?

A. Oh, that took—it was a pretty complicated thing. It probably took two months or something like that.

Q. This would have been sometime in 1983?

A. Yes. In the spring or—late spring we'll call it; May, maybe; something like that.

Q. Had Mr. Malarich been brought back as a full-time employee?

A. No. It started as a temporary.

Q. You say it started as a temporary?

A. Yes.

Q. Was he converted in—

A. Well, he was laid off again after that job was [15] finished for a period of time. I don't recall how long; maybe a month or so. By that time, business had picked up a bit and he came back as a permanent employee and thus was eligible for the retirement offer that was made in the fall of 1983, at which he took.

Q. Is that when Mr. Faust was brought back?

A. I think that is when he was brought back; around that time.

Q. He was brought back after Mr. Malarich retired?

A. Announced his intention to retire, yes.



Q. Was there a period of time from when he announced his intention to retire and when he actually retired, or was it a rather short—

A. It was a very short period of time.

Q. Matter of days or a week or how long?

A. That's about it, yes. He only had a couple weeks to choose.

Q. Do you know was there any consideration given to bringing Mr. Brieck back rather than Mr. Malarich to do that special job in early 1983?

A. No, because Al Malarich had much more experience [16] in this type of installation as opposed to Gene.

Q. What about when the business had picked up and Mr. Malarich was brought back as a permanent employee? This would be some time in 1983.

A. No, there wasn't any consideration.

Q. Why not?

A. Again, because generally Al Malarich was considered to be a better Installation man; more versatile, better accepted by—particularly by field personnel.

Q. When Mr. Faust was brought back after Al Malarich announced his intention to retire, was Mr. Faust brought back as a full-time permanent employee?

A. Yes.

Q. Were you consulted about bringing Mr. Faust back?

A. No.

Q. Did you plan any part whatsoever in the decision to bring Mr. Faust back?

A. No.

Q. Who made that decision?

[17] A. I guess Mr. Sheatsley.

Q. Do you know was any consideration given to bringing Mr. Brieck back rather than Mr. Faust?

A. Not that I know of.

* * * *

[25] Q. Have you ever had any customer complain about any deficiency in Mr. Brieck's work performance; any complaint that was of a serious nature?

[26] A. Only insofar as some of our field sales people were not totally satisfied always with Gene's attention to detail and performance on the job.

Q. When were those comments made to you?

A. At various times.

Q. Is there any documentation for any of those things; any indication in his personnel file that you're aware of?

A. Well, there was the incident at Wheeling-Pittsburgh Steel very near the end of his employment.

Q. Could you describe that incident for us?

A. Well, through maybe a communication problem or something he left a job before completion of a BOF lining; an area that was considered very critical in construction and detail by the customer.

* * * *

[27] Q. Do you know was this incident concerning the Wheeling-Pittsburgh Steel job—did it play any [28] part whatsoever in the decision to lay Mr. Brieck off in July 1982?

A. Not as far as I know.

* * * *

Q. How would you rate Mr. Brieck's performance overall? I think you said earlier it was—

[29] A. Average.

Q. —average.

A. Adequate in the job that he was hired to do.

* * * *



## EXCERPTS FROM THE DEPOSITION OF JOHN M. NICOLELLA

(Record 248a-297a)

* * * *

[4] Q. What is your occupation?

A. I'm the manager of employee relations for [5] Harbison-Walker.

Q. How long have you held that position?

A. I've held that position since the mid '70s. I actually took the position as manager of personnel in 1982, which essentially is the same job.

* * * *

[8] Q. . . . Let's say in the period 1982, how many employees were involved in—were covered by the duties that you were engaged in?

A. Within the industrial relations department and my employee relations department, I would say there were four of us in 1982.

Q. Your work touched how many employees of Harbison-Walker?

A. In what year?

Q. In 1982. In early 1982, roughly before [9] these big layoffs started to take place?

A. The numbers that I compiled before this, it went back to 1980 when the thing started to tail off. In 1980 there were roughly 5000 employees, which included international operations and Canadian operations. Of those 5000, there were 1450 salaried people, which those people are mainly the ones that I touch upon with the salaried administration.

Q. And in the period leading up to July of 1982, let's say in early 1982, how many employees were there then within Harbison-Walker?

A. Roughly 3,000.

Q. Was the attrition due to a layoff or—I'm sure it was. When did the attrition start to take place and what were the reasons for it?

A. The attrition started to take place in mid 1980.

Q. Can you explain the circumstances?

A. Mainly the lack of business in the steel industry, which we supply most of our products to.

Q. Can you describe the process that began in 1980 in terms of how you would select employees for furlough or for early retirement, however you would effectuate the reduction in force?

[10] A. When the word would come out that we would have to cut back in capacity costs, specifically in numbers of people, laying off of hourly people is strictly done by seniority by each individual plant and we don't get involved in that.

As far as salaried people go, the word would go out to the department heads, and I'm talking vice presidents would be the department heads, that they would have to cut back to a certain figure. They would then decide on who they could best do without under a reduced work force. They would compile a list of names and submit the names to me—to our department. I would then review the list and anyone that had more than 15 years of seniority with our company would have to be referred to Dallas for their approval.

Once we agreed, once industrial relations agreed with the people that should be laid off, the word went back to the department and those people were laid off.

Q. Was your role just to see whether people had over 15 years of employment?

A. My role was basically to look into each individual case for EEO purposes—equal opportunity employment purposes and just to— [11] specifically look at people below 15 years and also the ones above 15 years. I would compile the report for above 15 years and send that to Dallas. I would essentially do for 15 years and below what



Dallas would do for 15 years and above. Dallas I'm talking the corporate headquarters.

* * * *

[13] Q. I see on page 1 of the document entitled "Layoff and Termination Approval-Salaried Employees" that it was issued June 29, 1982, and it indicates under the policy section in subparagraph No. 2, "All Dresser locations must obtain prior Corporate approval of the involuntary termination of any salaried employee having 15 or more years of service." Is that correct?

A. Yes, it is.

Q. That was the unwritten rule in effect prior to June 29, 1982 also?

A. That's correct.

[14] Q. Was Mr. Brieck one of those people that was covered by that policy as of July 1982?

A. Yes, he was.

Q. Was his furlough approved by Dallas?

A. Yes, it was.

* * * *

[15] Q. Mr. Nicolella, I'm going to show you a document that is a copy of the complaint filed by Mr. Brieck in his action pending before U.S. District Court for Western District of Pennsylvania and refer you to paragraph 15. . . .

* * * *

[16] Q. Would that statement attributed to Senior Vice President [Ytterberg] in the Dresser Industries company newspaper entitled *Dresser News* in the Spring 1982 edition of that newspaper, would that statement be part of the unwritten rules that were in effect prior to the June 29, 1982 document that you have identified as part of Nicolella Deposition Exhibit No. 1?

A. Yes, it would.

Q. I'm going to show you a document that I'll mark as Deposition Exhibit No. [2] . . . which is the spring 1982 edition of the Dresser news publication and call your attention to the article entitled, "Some Plants

Forced to Make Employee Layoffs", and ask you to take a look at pages 1 and 2 of that document.

* * * *

[17] Q. Would this Deposition Exhibit No. 2 also be part of the unwritten rules that existed in the spring of 1982?

A. Yes, it would be.

Q. It would also have been part of the rules that were in effect when the furlough of Mr. Brieck took place in July of 1982?

A. That's correct.

* * * *

[19] Q. Did you have a discussion with either Mr. Sheatsley or Mr. Jamison prior to Mr. Brieck's layoff in July of 1982?

A. No, I did not.

Q. Did you have a discussion with any individual in supervision—in the line of supervision or over Mr. Brieck prior to July of 1982 about whether he would be a candidate for furlough?

A. Yes, I did.

Q. Who was that?

A. William Sekeras.

Q. Who is Mr. Sekeras?

A. I'm not sure if his title at the time—he's presently the vice president of marketing.

Q. Do you recall what your discussion was with Mr. Sekeras regarding Mr. Brieck?

A. Specifically I don't recall discussing Mr. Brieck. We just talked about all the people in general.

Q. What role did you or any person in your department play in selecting the individuals for furlough, if you did play a role in selecting those individuals for furlough?

[20] A. I did not play a role in selecting individuals for furlough.



Q. Prior to say an employee with over 15 years of employment with Dresser Industries having their imminent furlough being approved by Dallas, was it first screened through you and you were asked to make your recommendation as to whether that person appeared to be an appropriate candidate for furlough?

A. Yes.

Q. Do you recall what you would have said about Mr. Brieck prior to information being sent to Dallas concerning the possibility of his being furloughed?

A. I would have said—I would have questioned why the individuals that were being singled out to be laid off would have been laid off. If there were any others that should have been laid off and he should have remained, I would have gone through that process of analyzing the situation of who was leaving and who was staying.

Q. I believe there were four installation specialists in the iron and steel department in July of 1982, that being Mr. Brieck, Hugh Faust, whose deposition we just took today, Mr. Malarich [21] and Mr. Meixsel?

A. I recall those names.

Q. Do you recall why Mr. Faust was kept on and the other three individuals were furloughed in July 1982?

A. Because Mr. Faust was able to perform more functions than the individuals that were laid off. In other words, in a reduced work force, we need people that are flexible, people that can perform more than one function because we are cut back.

Q. Who related to you that Mr. Faust was able to perform more functions?

A. I don't remember exactly, but it would have been somebody from the marketing department. Plus Mr. Faust worked in the administration department before he came into the iron and steel support group.

Q. What difference would that last factor have made?

A. He was able to perform the duties from the marketing administration department.

Q. Such as?
A. Pricing, quoting.
Q. Anything else?
A. That's all I can think of.
[22] Q. In looking at it from an EEO viewpoint, do you recall your having a discussion with any individual regarding the way it might look to someone in an agency that is charged with administering fair employment practices laws if Mr. Faust were kept, he being under age 40, and three individuals over age who were terminated? Do you recall having any discussions with anyone about that?
A. That is the type of discussion that I would have had with a department head.
Q. Do you recall having a specific discussion like that?
A. Specifically, I don't remember this one, but I know I would have questioned that.
Q. Do you recall specifically questioning that even if you can't remember the person you questioned it with? That is, did you in fact question someone about why Mr. Faust was being kept on?
A. Yes, I had to. I had to question that.

* * * *

[23] Q. Do you recall asking anybody whether Mr. Brieck or Mr. Meixsel or Mr. Malarich were trainable in a short period of time to perform the pricing or quoting functions that Mr. Faust was able to perform?
A. I'm sure during the conversation it came up why these three older individuals, and the answer came back and—was they are installation specialists, they are bricklayers. We need somebody that can do more than just supervise the installation of brick in a steel mill. Hugh Faust fit that bill. Even though he was younger, he had more years service, but he could do that job. He had more years service than any of those other individuals.
Q. Any of the three of them?
A. Yes.



Q. Were there any other factors that came into play such as ratings or anything like that in [24] deciding to keep Mr. Faust?
A. Yes, ratings would have come into play, also. Mr. Faust is rated higher than Mr. Brieck.

* * * *

Q. Could you describe, Mr. Nicolella, the rating procedures that was in use for the several years prior to July 1982?
A. The rating procedure was essentially a five category performance rating, the top rating or the highest being outstanding, that's the fifth level. The fourth level would be very good, the third level fully satisfactory, the fourth fair,—I'm mixed up.
Q. Number 2 would be fair and—
A. And number 1 would be unsatisfactory.
Q. Was there any weighting that was done with regard to the various factors used in making the decision to retain Mr. Faust and not the three older individuals? Say if you take three or four different factors, were a certain number of points assigned to each of the factors and a total number of points developed?
A. No, it wasn't that sophisticated.
[25] Q. More of a subjective system that was in use?
A. By the department.
Q. By the department?
A. Yes. By the managers in that department.

* * * *

Q. . . . You or people in your department played an advisory function to the people in the department, though, is that correct?
A. Yes.
Q. You had no personal observation yourself—you had no prior ability to observe the performance of Mr. Faust, Mr. Brieck, Mr. [Meixell] or Mr. Malarich?
A. No, I did not.

Q. Were there any other factors that came [26] into play in the decision to retain Mr. Faust and not the other three individuals—not any of the other three individuals?

A. I'm sure there were other factors, but the main factor was the flexibility of the individuals and performance ratings.

Q. Flexibility of Mr. Faust?

A. Yes.

Q. And performance ratings?

A. Yes.

* * * *

[29] Q. What is the normal practice to be followed by a management-level employee of Harbison-Walker when they notice a defect in the work performance of one of the people they supervise?

A. The advice to the manager is to counsel the individual, to talk to the person. And a lot of times there aren't written records made of those kinds of talks.

Q. In 1982 and in the year or two prior [30] thereto, was it the practice of Harbison-Walker or a policy at least of Harbison-Walker to encourage managers to reduce the oral counsellings to writing in the form of a document to the file or memorandum that would be given to the employee?

A. We had not encouraged them to do that, no.

Q. Have you since changed your policy and do you now have a policy that requires—that encourages managers to document things?

A. We had no written policy that encourages managers to do that.

Q. Is there any unwritten rules regarding that?

A. We constantly remind them to document such incidents, yes.

Q. What form of documentation do you encourage your managers to engage in?

A. Simple write-up of the incident.

Q. Is a copy of the write-up to be given to the employee?

A. No.



Q. This was the practice prior to July 1982 also?

A. Yes.

* * * *

[33] Q. I'm going to show you a document here which I have identified as Nicolella Deposition Exhibit No. 5 and ask if you can identify that?

A. Yes, I can.

Q. What is that?

A. That's a memo from Mr. Shonkwiler to me explaining four individuals that he would like to layoff that had more than 15 years service.

[34] Q. What's the date of that memo?

A. June 17, 1982.

Q. Do you recall what you did with that memo when you got it?

A. After analyzing it myself, I would have forwarded the information to the corporate headquarters for their approv f these four individuals.

Q. How did you review that information given to you by Mr. Shonkwiler? What did your review consist of might be a better question?

A. Review would have consisted of Mr. Brieck's title, his job grade, his hire date, his age, race, and his ratings.

* * * *

Q. I assume you got a memo back from Dallas after you sent on—sent this information onto Dallas?

A. Either memo or phone call.

Q. Do you recall now after looking at Exhibit No. 5 what was the means of communication from Dallas to you that approved those four individuals?

A. No, I do not recall.

* * * *

[41] [Q.] In Mr. Faust's deposition this morning, he informed us he was laid off in November 1982 and thereafter he was called back as a permanent employee on or about August 1st, 1983. Do you know what were the considerations that were involved in hiring him back as

a fulltime employee in August 1983 and not Mr. Brieck—and not Mr. Brieck?

A. The same considerations in bringing him back were the ones that were taken into consideration in holding him on longer. As the business was going down, he was held longer because he had more flexibility. As it began to build back up again, he was brought back in again for the same reasons.

Q. Because he had more flexibility than Mr. Brieck did?

A. Yes.

Q. Do you recall there being any discussions about who to bring back when the need arose to have a full-time employee to perform the installation specialist function?

A. No, I don't.

Q. Would you or someone in your department have been contacted from an EEO viewpoint when that decision was made—or before that decision was [42] made to bring Mr. Faust back rather than either Mr. Brieck or Mr. Malarich or Mr. Meixsel?

A. We would have been notified, yes, that they were going to bring Mr. Faust back, for instance.

Q. Do you recall being notified?

A. Specifically in this case, I do not recall.

Q. You would have been notified?

A. Yes.

Q. Would you have had any opportunity to provide input into that decision?

A. Yes.

* * * *



DEPOSITION EXHIBIT 3

HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.
2 Gateway Center, Pittsburgh, Pennsylvania 15222

EMPLOYEES

Month Ending June 30, 1980

| | HOURLY | EXEMPT | NON-EXEMPT | TOTAL |
|---|---|---|---|---|
| UBCWA | 568 | 92 | 46 | 706 |
| OCAWIU (Ludington) | 130 | 23 | 3 | 156 |
| LIU (Calhoun) | 230 | 32 | 9 | 271 |
| USWA | 2,286 | 342 | 164 | 2,792 |
| NOU (Central District Prospecting) | 2 | 0 | 0 | 2 |
| (Vandalia Mines | 9 | 0 | 0 | 9 |
| CALSILITE OPERATIONS | 40 | 18 | 11 | 69 |
| GARBER RESEARCH CENTER | 0 | 36 | 62 | 98 |

Continued

| | HOURLY | EXEMPT | NON-EXEMPT | TOTAL |
|---|---|---|---|---|
| GENERAL OFFICE | | | | |
| Breakdown: | | | | |
| Executive | 0 | 14 | 2 | 16 |
| Finance | 0 | 27 | 56 | 83 |
| Industrial Relations | 0 | 11 | 6 | 17 |
| International | 0 | 22 | 17 | 39 |
| Manufacturing | 0 | 53 | 24 | 77 |
| Marketing | 0 | 91 | 82 | 173 |
| Planning | 0 | 4 | 1 | 5 |
| QUALITY CONTROL TEST CENTER | 0 | 3 | 7 | 10 |
| SALES OFFICES AND WAREHOUSES | 1 | 118 | 71 | 190 |
| TOTAL | 3,266 | 886 | 561 | 4,713 |
| CANADIAN REFRACTORIES DIVISION | 518 | 150 | 79 | 747 |
| GRAND TOTAL | 3,784 | 1,036 | 640 | 5,460 |



HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.
2 Gateway Center, Pittsburgh, Pennsylvania 15222

Month Ending October, 1982

| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| ABGWIU | 68 | 19 | 272 | 359 |
| OCWIU (Ludington) | 10 | 2 | 4 | 16 |
| LIU (Calhoun) | 29 | 7 | 152 | 188 |
| USWA | 237 | 51 | 866 | 1,154 |
| NOU (Central District Prospecting) (Vandalia Mines) | 000 | 000 | 3 | 3 |
| CALSILITE OPERATIONS | 10 | 6 | 53 | 69 |
| DRESSER MINERALS-HOUSTON | 5 | 2 | 0 | 7 |
| GARBER RESEARCH CENTER | 35 | 40 | 0 | 75 |

Continued

| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| GENERAL OFFICE: | | | | |
| Dresser Minerals-Pittsburgh | 2 | 1 | 0 | 3 |
| Executive; | | | | |
| Group | 10 | 2 | 0 | 12 |
| U.S. Division | 2 | 0 | 0 | 2 |
| Finance | 34 | 30 | 0 | 64 |
| Industrial Relations | 8 | 4 | 0 | 12 |
| International | 18 | 12 | 0 | 30 |
| Manufacturing | 43 | 14 | 0 | 57 |
| Marketing | 75 | 47 | 0 | 122 |
| Planning | 3 | 1 | 0 | 4 |
| ON LOAN TO FOREIGN SUBS. | 1 | 0 | 0 | 1 |
| QUALITY CONTROL TEST CENTER | 3 | 4 | 0 | 7 |
| SALES OFFICES AND WAREHOUSES | 122 | 38 | 0 | 160 |
| TOTAL | 715 | 280 | 1,350 | 2,345 |
| CANADIAN REFRACTORIES DIVISION | 130 | 48 | 201 | 379 |
| GRAND TOTAL | 845 | 328 | 1,551 | 2,724 |



HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.
2 Gateway Center, Pittsburgh, Pennsylvania 15222

Month Ending May, 1983

| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| ABGWIU | 79 | 19 | 477 | 575 |
| OCWIU (Ludington) | 21 | 2 | 118 | 141 |
| LIU (Calhoun) | 28 | 7 | 151 | 186 |
| USWA | 188 | 46 | 989 | 1,223 |
| NOU (Central District Prospecting) (Vandalia Mines) | 0 | 0 | 0 | 000 |
| CALSILITE OPERATIONS | 10 | 5 | 54 | 69 |
| DRESSER MINERALS-HOUSTON | 3 | 2 | 0 | 5 |
| GARBER RESEARCH CENTER | 32 | 32 | 0 | 64 |



Continued

| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| GENERAL OFFICE: | | | | |
| Dresser Minerals-Pittsburgh | 2 | 1 | 0 | 3 |
| Executive; | | | | |
| Group | 9 | 2 | 0 | 11 |
| U.S. Division | 2 | 0 | 0 | 2 |
| Finance | 35 | 26 | 0 | 61 |
| Industrial Relations | 8 | 3 | 0 | 11 |
| International | 19 | 12 | 0 | 31 |
| Manufacturing | 40 | 14 | 0 | 54 |
| Marketing | 68 | 40 | 0 | 108 |
| Planning | 3 | 1 | 0 | 4 |
| ON LOAN TO FOREIGN SUBS. | 1 | 0 | 0 | 1 |
| QUALITY CONTROL TEST CENTER | 3 | 3 | 0 | 6 |
| SALES OFFICES AND WAREHOUSES | 114 | 29 | 0 | 143 |
| TOTAL | 665 | 244 | 1,789 | 2,698 |
| CANADIAN REFRACTORIES DIVISION | 106 | 32 | 229 | 367 |
| GRAND TOTAL | 771 | 276 | 2,018 | 3,065 |

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HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.
2 Gateway Center, Pittsburgh, Pennsylvania 15222

Month Ending November, 1983

| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| ABGWIU | 88 | 23 | 570 | 681 |
| OCWIU (Ludington) | 21 | 2 | 115 | 138 |
| LIU (Calhoun) | 29 | 7 | 153 | 189 |
| USWA | 168 | 43 | 926 | 1,137 |
| NOU (Central District Prospecting) (Vandalia Mines) | 0 | 0 | 0 | 000 |
| CALSILITE OPERATIONS | 0 | 1 | 0 | 1 |
| DRESSER MINERALS-HOUSTON | 3 | 1 | 0 | 4 |
| GARBER RESEARCH CENTER | 30 | 31 | 0 | 61 |

Continued

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| | EXEMPT | NON-EXEMPT | HOURLY | TOTAL |
|---|---|---|---|---|
| GENERAL OFFICE: | | | | |
| Dresser Minerals-Pittsburgh | 2 | 1 | 0 | 3 |
| Executive; | | | | |
| Group | 6 | 1 | 0 | 7 |
| U.S. Division | 2 | 0 | 0 | 2 |
| Finance | 33 | 27 | 0 | 60 |
| Industrial Relations | 6 | 3 | 0 | 9 |
| International | 18 | 11 | 0 | 29 |
| Manufacturing | 36 | 15 | 0 | 51 |
| Marketing | 67 | 35 | 0 | 102 |
| Planning | 3 | 1 | 0 | 4 |
| ON LOAN TO FOREIGN SUBS. | 0 | 0 | 0 | 000 |
| QUALITY CONTROL TEST CENTER | 2 | 4 | 0 | 6 |
| SALES OFFICES AND WAREHOUSES | 105 | 29 | 0 | 134 |
| TOTAL | 619 | 235 | 1,764 | 2,618 |
| CANADIAN REFRACTORIES DIVISION | 103 | 34 | 276 | 413 |
| GRAND TOTAL | 722 | 269 | 2,040 | 3,031 |



DEPOSITION EXHIBIT 5

HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.
2 Gateway Center, Pittsburgh, Pennsylvania 15222

To: J. M. Nicolella—20 North:

From: F. P. Shonkwiler

Subject: Personnel Changes—Justification

Date: 6/17/82

Refer:

CC: D.F.Stock
W.G.Sekeras
W.B.Lewis
File

The following proposed furloughs involve individuals with over 15 years' service but are necessary actions because of the extremely low level of Harbison business.

Specific explanations are as follows:

1) *E. F. Brieck*—Insufficient installation work for total Staff. Mr. Brieck is our least qualified Installation Specialist and has limited expertise.

2) *S. Hamilton*—Primary customers of this Field Sales Representative have shut their plants down and we do not have sufficient work in the Portsmouth area for a Sales Representative.

3) *J. Wojtulski*—Insufficient business at the Buffalo Service Center for both the Manager and the Warehouseman; therefore, we must furlough this man.

4) *C. Owens*—Insufficient business in the Detroit Service Center for both the Manager and the Warehouseman; therefore, we must furlough this man.

FPS/krb

/s/ F.P. Shonkwiler

1) Eugene F. Brieck-Installation Specialist, Iron & Steel Market

| Name | Title | Job Grade | Hire Date | Age | EEO Cat. | Ratings 81 | 82 |
|---|---|---|---|---|---|---|---|
| Brieck, Eugene F. | Installation Specialist | E-3 | 6-7-65 | 55 | WM | FS | FS |
| *Faust, Hugh J. | Installation Specialist | E-3 | 9-1-66 | 39 | WM | FS | FS |
| *Malarich, Albert G. | Installation Specialist | E-3 | 8-1-66 | 59 | WM | FS | VG |
| 2) Sharon W. Hamilton | Sales Rep. | E-3 | 9-1-62 | 44 | WF | F | F |

Portsmouth Sales Office closed. Works out of Plant. Plant is down. No alternative.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 3) Joseph P. Wojtulski | Warehouse Attendant B | NE-4 | 4-22-68 | 36 | WM | VG | VG |

Only Warehouse Attendant. Operation will be run by Warehouse Mgr.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 4) Claude L. Owens | Warehouse Truck Driver | NE-5 | 12-2-64 | 50 | BM | VG | FS |

One of two Truck Drivers. Both black males. Both being laid off. Operation will be run by Warehouse Manager-black male.

* Not Affected





DEPOSITION EXHIBIT 6

HARBISON-WALKER REFRACTORIES
Division of Dresser Industries, Inc.,
2 Gateway Center, Pittsburgh, Pennsylvania 15222

Richard G. Jewell
General Attorney

September 10, 1982

Mr. Joseph E. Retort
Pennsylvania Human Relations Commission
State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Subject: Docket No. E-23266
Eugene Brieck vs. Harbison-Walker Refractories, Division of Dresser Industries, Inc.

Dear Mr. Retort:

The following is submitted pursuant to your written requests made at our Fact Finding Conference on September 9, 1982:

1. Copy of Claimant's PID form. Note number 3 circled. This means fully satisfactory performance.
2. H. J. Faust is an Installation Specialist born May 31, 1943. In his job duties he assists in installation work, helps prepare project bids (financially) and helps make engineering sketches and technical preparation and proposals.
3. The other two individuals laid off are:
   (a) A. Malarich—Date of Birth: March 31, 1923, Date of Service: August 1, 1966, Lay Off Date: July 30, 1982.

(b) W. Meixsel—Date of Birth; July 28, 1923, Date of Service: January 28, 1980, Lay Off Date: July 9, 1982.

4. Information on engineers laid off:

(a) G. Dodds: Age 24—Laid Off July 9, 1982

(b) C. Maus: Age 26—Laid Off July 9, 1982

(c) D. Smith: Age 34—Laid Off July 12, 1982

(d) J. Schiffman: Age 25—Laid Off July 9, 1982

Finally enclosed is a written statement from L. L. Sheatsley concerning his recollection of the layoff interview.

We trust the foregoing is responsive to your needs. If you have any questions, please let me know.

Very truly yours,

/s/ Richard G. Jewell

RGJ/mak

Enclosures

cc: J. M. Nicolella



## EXCERPTS FROM THE DEPOSITION OF HUGH J. FAUST

(Record, 299a-326a)

* * * *

[4] Q. How long have you been employed by Harbison-Walker?

A. September 1966.

Q. Have you been employed continuously from September 1966 to the present time with Harbison-Walker?

A. I was laid off.

Q. When were you laid off?

A. That was November 1982.

Q. Had you worked continuously for Harbison-Walker from September 1966 until November 1982 when you were laid off?

A. Correct.

[5] Q. How long were you laid off beginning in November 1982?

A. Wasn't the beginning on November '82. It was before Thanksgiving, I do not know the correct date. I came back August 1st, 1983. . . .

* * * *

Q. Did you come back in August of '83 to the same position you had held when you were laid off in November of '82?

A. Correct.

Q. Same basic duties?

A. Yes.

* * * *

Q. . . . Could you describe for me what your duties were in July of 1982?

A. I was assigned to the—I was in the iron and steel department. I was assigned to work with Stan Pavlica on blast furnace projects and [6] installations.

Q. How do you spell Pavlica?

A. P-a-v-l-i-c-a.

Q. What were your duties when you worked with Mr. Pavlica?

A. I went out on blast furnace installations. Covering brick installations and casthouse products.

Q. What were your duties when you went out in the field?

A. That was it.

Q. What did you do specifically? You didn't actually install the brick itself?

A. We always go out usually as an observer and make sure the bricks are installed so you can utilize—get the maximum out of your refractories.

Q. What are casthouse products?

A. Specifically tap hole material, and trough runner materials.

Q. Could you explain that for me very briefly?

A. Tap hole material—the blast furnace has a tap hole. The iron comes out of the tap hole. Obviously, you have to shut the iron off so the furnace can build up, make more iron. We have a product pushed in the tap hole to stop the flow of iron coming out. It's a relatively new product, [7] and we went out on a lot of installations involving that particular material. At the same time, we were getting involved in trough materials and a stream of iron comes out of the furnace, it comes into a trough, which is also lined with refractory materials. Also went out on installation of those.

Q. Did you go out with Mr. Pavlica?

A. No.

Q. You went out by yourself?

A. (Nodding head affirmatively.)

* * * *

[8] Q. What is your educational background?

A. Four years of college, no degree.

Q. High school graduate, I assume?

A. Yes.

* * * *



[9] Q. What was your major field of study?

A. Business.

* * * *

Q. What was your initial job position when you came with Harbison-Walker in September 1966?

A. Assistant correspondent.

* * * *

Q. What department was this?

A. It was called basic.

Q. In the basic department?

[10] A. Right.

Q. What kind of department was that?

A. It was—they handled orders, processed orders, quotations.

Q. What were your job duties as assistant correspondent?

A. Mostly pricing.

Q. Was it an office job?

A. Yes.

Q. How long did you remain in that capacity?

A. I truthfully can't say. Like I say, I don't keep records. If I had to guess, I'd say maybe four years or something like that.

Q. What was your next job position with Harbison-Walker and roughly when did your new position begin?

A. I can't—on the time frames I don't know. I moved up to correspondent.

Q. What did you do as correspondent?

A. Processed orders, had customer contact, make quotations. By that dictating, rather than working up prices.

Q. You say dictating?

A. Dictaphone. Somebody would give me the prices and I would just, you know, write it out and [11] send out all the paperwork. Sign my name, send it to the customer.

Q. Were you involved in sales at all or was your job more or less to support the sales staff?

A. Support the sales staff, but I did have direct contact with customers. On the phone. Phone contact.

Q. What percentage of your time was spent in the office when you were a correspondent?

A. One hundred percent.

Q. How long did you remain as a correspondent, approximately?

A. Five or six years.

Q. What was your next job position with Harbison-Walker?

A. Staff correspondent.

Q. Are we now talking about 1975 or 1976?

A. In that neighborhood. Your numbers aren't going to come out the same because I'm not sure how long I had each position. I do know the positions.

Q. What were your duties as staff correspondent?

A. I took care of the company cars. I did a lot of filing of product files, product development. At the time, I also handled what they call a check [12] point list, which is actually I gave marketing priorities on orders to manufacturing.

Q. Can you explain what that means?

A. We receive orders, orders are entered to different plants. Plants have to schedule the orders. So what I would do was get a listing of all the orders, send it out to the regions, ask them what their priorities for those orders were for the given manufacturing time schedule. Took all the orders from all the regions, and assigned the iron and steel market priority numbers on all orders to a given plant. And turned it over to manufacturing. That took the bulk of my time. This check point list.

Q. What percentage of your time—when you say the bulk, 50, 60, 70 percent or more than that even?

A. Say 50 percent.

Q. How long did you remain as staff correspondent, Mr. Faust?



A. I'd say three years, something like that. Like I say, numbers aren't going to work out.

Q. Were you involved in any installation specialist work during that period of time or when you were a correspondent or assistant correspondent?

[13] A. I did not do any installation work until I was a staff correspondent. One day someone tapped me on the shoulder, I forget who it was. He said, "It's time to go out and get metatarsal shoes. Here, you can borrow this old hat."

Q. Was this early on in your position as—let me finish the question— in your position as staff correspondent or later in those roughly three years when you were staff correspondent?

A. I'd say roughly after a year-and-a-half.

Q. What did you begin to do when the person said that you should get your metatarsal shoes?

A. Did it.

Q. How did they train you?

A. On-the-job training.

Q. What were you—how were you trained?

A. Good question. Usually we had a blueprint to follow, find out what sizes go where, what brands go where. Make certain that the installation is installed correctly, right shapes, correct brands in certain places. Speciality items, such as mortars and castable, a lot of it was and still is—you know how much to add—how much water to add to certain mixes, but it's still a feel and touch and look method to obtain proper [14] consistency.

* * * *

Q. How did you get trained so you would be able to develop the feel and touch you said that was needed to determine what the proper consistency was?

A. The idea of me going out on these installations. Before that, as a staff correspondent, I received all the product [15] development files and the—all the development work going on in the company. I read all those

files. So I knew a little something about the products themselves. But then through field assignments, you find out what's exactly needed for a particular job.

Q. When you were a staff correspondent, what percentage of your time was spent doing installation work, supervising installation work?

A. Maybe two, three days a month. Wasn't very often.

* * * *

Q. . . . Let me start over.

What was your next job position after you were staff correspondent?

A. Installation specialist. Here again, you're going to ask the time frame. I'm not sure.

* * * *

[16] Q. When did you receive more in-depth training to become an installation specialist than just going out two or three days per month?

A. When they sent me out on my own. Real education.

Q. Did they send you to any courses?

A. No.

Q. Nothing like that?

A. No. We would have occasionally meetings which I would attend. Sometimes go to research for meetings. But no college courses or anything like [17] that.

Q. It was almost all on-the-job training?

A. Right.

* * * *

Q. Can you describe what your duties were as an installation specialist?

A. Currently or—?

Q. When you first became an installation [18] specialist.

A. We got into that before. I was assigned to the blast furnace and I got into tap hole materials and trough materials, plus the installation of blast furnace linings,



blast furnace stoves, the complete package for blast furnaces.

Q. Had you ever been involved in sales in any respect during your employment with Harbison-Walker?

A. No, but we feel like we are a part of sales. Staff support.

Q. You support the sales, but you were never performing an actual sales function yourself?

A. No. But when a material worked, we would pursue it with the customer and let the salesman know what was going on, go after it.

Q. Did any of the other installation specialists have any experience in pricing or any of the duties you had performed when you were a correspondent or assistant correspondent? Or staff correspondent? To your knowledge?

A. Dave Cimini.

Q. How is his name spelled?

A. C-i-m-i-n-i.

Q. Did Mr. Brieck have any experience, to [19] your knowledge, in pricing or product development?

A. Not that I'm aware of.

Q. Did Mr. Malarich or Mr. [Meixell]—

A. [Meixell].

Q. Did any of them have any experience in pricing or in quotations of prices?

A. I can't answer for them.

Q. When you were in the office, did you ever hear any comments made by anyone about Mr. Brieck's work performance, whether that was either good or bad? Did you ever hear any positive or negative comments about Mr. Brieck's work performance?

A. No, because he was hardly ever there.

Q. He was in the field most of the time?

A. Right.

Q. Did you ever hear anyone complain about Mr. Brieck's work performance?

A. No.

Q. During the time that you were an installation specialist up until your layoff in November 1982, did you spend any percentage of your time doing office work as opposed to actual installation work?

A. Office work? Yes.

Q. Roughly what percentage of your time would [20] have been spent doing office work? As an installation specialist?

A. Maybe even 60 percent. . . .

* * * *

Q. Of the number of days in a month, what percentage of days would you be in the office and what percentage might you be in the field doing installation work?

A. 50/50.

Q. What type of office work did you do when you were an installation specialist?

A. Margins—

Q. What does that mean?

A. Figure out what the bottom line is on the cost. We quote things. But we also have certain costs. We have to know how much we are going to make on a certain job. Especially large jobs. [21] Always figure out what the bottom line is. A lot of times salesmen have to negotiate. We have to know what the bottom line is. Maybe we're willing to come down a little bit, maybe we're not.

Q. Who would you work with in helping to develop these margins?

A. I would work them up and give them to Stan Pavlica. Also do some figures for him of orders—blast furnace orders, kept track of the blast furnace files.

Q. Any other kind of office work you did as an installation specialist?

A. I can't think of anything offhand. I usually do a lot of things that people just tell me to do. Like a car needs fixed, got something out at advertising that we need. Whatever. Even drove a forklift down the warehouse one time.



Q. So if somebody had to go for something, you might have to do that?

A. Not have to, I would be asked nicely to do it. I would volunteer.

Q. Excuse me for degrading your role, but would part of your job be to be a gofer?

A. Sure. I don't mind doing that. It's something different.

[22] Q. I'm not saying anything bad about it, but part of your job was to be the office handyman?

A. Yeah. That was part of being staff correspondent. I like doing things for people. The department as a whole. It makes things go easier. Every department needs one.

* * * *

[25] Q. Did you ever have a private conversation with any of your superiors at any time from March of '82 until your layoff in November of '82 when you were told that you might be going pretty soon, that you might be laid off?

A. No, there was no inkling of it.

Q. Can you describe what did happen when you were laid off in November of '82?

A. I came back from a job and there was a [26] note on my desk to see Larry Sheatsley. At that time I knew that I was gone.

Q. Did you go see Mr. Sheatsley right away?

A. Sure.

Q. What did he tell you?

A. It was my turn.

Q. Can you recall what else he said to you about whether you might be recalled at any time in the near future?

A. No, that wasn't mentioned. In fact, I didn't think I'd ever get called back.

Q. What did he say to you in November '82?

A. That he was sorry, wished I didn't have to go, but money wasn't there anymore. I don't know how they

worked the layoffs out. I think it had to do with what their budgets were and they were told, you know, got to go.

Q. Did you talk to anyone other than Mr. Sheatsley about the layoff in November of '82?

A. Yes, Bill Sekeras.

Q. What did you say to Mr. Sekeras and what did he say to you? How do you spell Sekeras?

A. S-e-k-e-r-a-s.

Q. What was his job position?

A. Vice president marketing or something. Or [27] assistant at the time, I think.

Q. What did he say to you?

A. Just basically that the company was having hard times and hated to see me go.

Q. Did you—

A. There were no promises made that I would be called back or anything like that.

Q. Were you trying to appeal from what Mr. Sheatsley had told you when you talked to Mr. Sekeras?

A. No. You mean—

Q. Go over his head?

A. Cry or something like that, get on my hands and knees? No, I'm not the type.

Q. Or ask him if he could do something to overturn the decision?

A. No. I was told the decision—after so many years, the decision had to come from Dallas and they applied for it and they said let him go. I think at the time I had something like 14 years or 15 years.

* * * *

[28] Q. During the period of time from when you first became an installation specialist until your layoff in November of '82, did you have experience with any other type of steel or iron-making facilities other than blast furnaces?

A. Yes.



Q. What was that experience?

A. Well, it goes back to being a staff correspondent. Some of my initial installations had to do with electric furnaces and BOF's. I believe the—the job I relieved Gene on they called it a TOC, which is the same as a BOF.

Q. What about degassers?

A. Never. Still don't know anything about degassers. Don't know anything about open hearths.

Q. How about iron transfer ladles?

A. Yes.

Q. You have had experience with those?

A. Yes. That's part of blast furnace, [29] spinoff.

Q. About how many different installations have you been involved with where there have been electric furnaces?

A. Dozen.

Q. What about with BOF's?

A. Maybe 18.

Q. When you were hired, can you describe the circumstances of your being hired back? I don't want to put words in your mouth.

A. I remember it well. I was on a ladder, all full of paint, and my father came running out the back door and said Larry Sheatsley wants to talk to you. He said are you available for work the next day, and I said yes. Went into the office the next day, gave me all my cards back and an advance, and the day after that I was on the jobsite at Wheeling-Pittsburgh Monessen doing an iron transfer car as you call it. Hot metal car. They are called a lot of things.

Q. Was this August 1983?

A. I was there, yes.

Q. What has been your experience since you came back as an installation specialist in August of '83?

[30] A. More time on the road. After the Wheeling-Pittsburgh job, I was sent out to CFI on a special project in Pueblo, Colorado. It was specifically for electric furnace roofs, all brick roofs. We were following linings. I

was there for four and a half months. That was my longest job assignment.

Q. Since coming back in August of '83, what has been the percentage of time you would spend on the job—on the road as an installation specialist?

A. 75, I guess, at least.

Q. When you were involved in duties that aren't actual installations, what duties do you perform now, or what duties have you performed from August of '83 to the present date that have not been installation duties?

A. Pretty much been related to that—I write reports of the installation. Have to have time to come into the office to do that. I've also still done some work with the blast furnace group working on margins again. Doing some filing. Not very much anymore. It's just piling up. But I still—

Q. You do work with the blast furnace group?

[31] A. Right.

Q. You do filing, and what was the other thing you said?

A. Margins. Also some gofer work like getting drawings out to the works, to salesmen.

Q. When you write reports of installations, any installation specialist would have to do that?

A. Yes.

Q. Even someone like Mr. Brieck—someone like Mr. Brieck in his old duties would have had to fill out reports regarding installations he had been involved in?

A. Correct.

Q. That wouldn't be anything unusual for you to do?

A. No. Part of the job, but usually if you're in the Pittsburgh office, that's when you have time to write the reports.

Q. What percentage of your time since August of '83 has been spent doing margins? Very small percentage?

A. Small percentages, yes.

* * * *



IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

---

[Title omitted in printing]

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**DEFENDANT'S RESPONSE TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

* * * *

ANSWER: a. Plaintiff received an evaluation rating annually as a result of evaluation and review by his supervisors and department heads. The review rates employees according to five categories with the following descriptions assigned to each respective classification:

(5) Outstanding

Exceptional performance at a level usually not achieved by others. Assignments and responsibilities are being accomplished at the highest possible level of performance. To achieve this level of performance, it would be unusual for the employee to have been in this position for less than one year.

(4) Very Good

Fully meets and frequently exceeds the position requirements. Accomplishes assignments and responsibilities in an effective manner. Results always meet normal standards. Shows definite progress in performance.

(3) Fully Satisfactory

Consistently meets position requirement. Accomplishments and responsibilities are accomplished effectively and in line with the normal standards of the job.

(2) Fair

Normally meets minimum position requirements, but occasionally performs less than expected. Assignments are being accomplished, but sometimes with less than normal effectiveness. Demonstrates progress in meeting job performance standards.

(1) Unsatisfactory

Unable to consistently meet minimum job requirements. Performance is frequently below standards and results are unacceptable.

* * * *

c. During the 1978 through 1982 period, Mr. Brieck was rated as follows: 1978—3; 1979—2; 1980—2; 1981—3; 1982—3.

* * * *



**HANDWRITTEN NOTE FROM D. JAMISON TO E. BRIECK**

Gene,

In case I forget to tell you the next time we talk, you have received an $83/month raise effective 3/1/82. This brings your monthly salary to $2,162.

The merit raise is well deserved and we hope that we can continue to reward you for your good work.

Enclosed is a copy of TT about EF bottom job a[t] Bayou starting 5/13. I expect you will be back from Turkey by then.

Again, thanks for your fine efforts.

/s/ Don

3/24/82